This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

US
6879
50

US 6879.50

Harvard College Library

FROM THE

FRANCIS PARKMAN
MEMORIAL FUND

FOR

CANADIAN HISTORY

ESTABLISHED IN 1908

CANADA'S ALASKAN DISMEMBERMENT.

AN
ANALYTICAL EXAMINATION
OF THE FALLACIES
UNDERLYING
THE TRIBUNAL AWARD.

"We negotiate about territory to cover the pecuniary about principle. But any attempt to take advantage of this voluntary facility we must oppose."
GEORGE CANNING.

Printed by
Charles Thonger,
At Niagara-on-the-Lake, Ont.
1904.

Alaskary Question, Canada's
Examment, an Analytical
the T. Fallacies Underlying
50c. 76 pages, 8vo, sewn,

Compris
Russian T ntroduction, The Anglo-
a Commission.

JUN 28 1910

Francis Parkman fund

CANADA'S ALASKAN DISMEMBERMENT

I

INTRODUCTION.

There can be no better introduction to a study of the real issues involved by the Alaskan Treaty between Great Britain and Russia, than the following extract from a letter written by Mr. George Canning, to the Minister in charge of the negotiations, as given by Mr. Thos. H. Balch, in a recent publication, in support of the claims of the United States. The letter is dated: Feb. 16–28, 1825.

> *"It only remains in recapitulation to remind you of the origin and principle of this whole negotiation.*
>
> *"It is not on our part a negotiation about limits.*
>
> *"It is a demand for the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an ocean of unmeasured extent; but a demand qualified and mitigated in its manner, in order that its justice may be acknowledged and satisfied without soreness or humiliation on the part of Russia.*
>
> *"We negotiate about territory to cover the remonstrance about principle. But any attempt to take advantage of this voluntary facility we must oppose."*

The attitude of the United States respecting the matter of the Alaskan Boundary, can only be properly understood as being part of a policy of aggression upon the Territorial rights of the Dominion of Canada; that, while creating a situation that must make her condition as a Colony of Great Britain intolerable, is one that might be immediately relieved by her secession from the Empire, and alliance with the States. As a solution for the many questions that are pending between the two countries, such a consummation has much to recommend it. The considerations opposed to this alliance may be summed up in the feeling of loy-

alty to the Mother Country, and to dislike of the political methods that are in vogue in the Union. The sentiment of loyalty is one, the strength of which can be permanently retained only in proportion to the sense of reciprocity with which it is met, and it so far shares the attributes of love, as to resent either indifference or unconsciousness. And unfortunately, Canada, by her proximity to the States, has been exposed to the pin-pricks of malice, as well as to extortions, directed against her as a dependency, that would not have been attempted or tolerated if directed against Britain herself.

Canada, as a dependency of Britain, can have no quarrel with the United States, with respect to their action on the Boundary Question. It is the duty of Britain, to resist aggressions upon her Colonies; unless she is prepared to find them making terms with the aggressor rather than with herself. It is the tolerance of Britain in the past that invites aggressions in the future.

There is some reason to suppose this indifference to the rights of her Colony has reacted on Britain, in an increase of the contempt and hatred of the citizens of the States, quite as much as from her actual relations to themselves in the past. The greater respect and friendship, recently manifested to Britain, does not result, perhaps, so much from a sense of the friendly abuse of her obligations of neutrality towards Spain, (from which, in theory at least, she holds Gibraltar; *as an ally*) as from a consciousness of a change in the attitude of the Empire towards the Colonies; that appears to have vastly increased the risk that aggressions previously tolerated, will no longer be regarded with similar complacency. For the apparent surrender of Colonial rights involved by the consent of Britain to the present Convention, it is evident Sir Wilfred Laurier, as appears from his answers to questions in the House at Ottawa, assumes the responsibility. The British Minister would not have agreed to such a Convention had he been warned that more than a matter of "limits" was involved in his consent.

My own conviction of the rights of Canada, has been

derived from a perception of the fallacious character of the assumptions, and weakness of the arguments used in behalf of the United States claims. There is an advantage in becoming acquainted with these, before making any attempt to understand the line of defense adopted by Canadian representatives; because in view of the disclosures made, of the falsification of maps and other methods of lying, resorted to in the case of the Maine Boundary negotiations, no logical mind can accept other propositions proceeding from the same quarter and affecting similar interests, without subjecting them to the gravest doubt and circumspection. Had Britain, when the fraud was discovered, been without the power to remonstrate, nothing could have been expected of her, by gods or men. But, having the power and failing to exact restitution, she became a partner in the guilt, and loses the right to resent a renewal of extortionate solicitations. To imagine the subsequent disclosure was in the slightest degree a fruit of repentance, and guarantee of good faith in the future, can only result from a fatuous disinclination to face disagreeable facts. The only lesson there is any reason to suppose has been learned from the experience, must be an assurance of the complaisance with which Britain submits to the consequences of taking part in such negotiations.

It is not unreasonable to suspect that the frauds practised during the Maine Boundary Negotiations, might be as the efforts of a 'prentice hand, compared with the more finished product of the Alaskan claims. Considered in the most favorable light, the avowed motive that prompted the purchase, was simply a wish to prevent the expansion of British interests upon this Continent; by opposing her right to redeem territory that was of greater importance to the Colony, than by any legitimate possibility it could be to a State that had no excuse for interference, or any apparent motive that was not sufficiently base to sanction any method of deceit by which its objects might be attained. It has always been the interest of the United States, to repudiate the obligations of Russia, and the implications of

this Treaty; while extending the concessions of Britain to the utmost limit; or to supersede the equity of its terms by reviving contentions that were accommodated by the ultimate solution it presents. The treaty does not recognise the PRE-EXISTENCE of the rights of Russia, it GRANTS THEM. A distinction that appears to have been lost sight of as affecting British interests; though there are some indications that it has been kept carefully in the background by the United States. Since its terms were arranged, politicians have had more than three generations in which to impress upon the minds of both peoples, whatever it was thought to their interest should find credence; and they have succeeded in imposing a belief that the terms of the treaty related entirely to the determination of limits, whereas the wording should also establish a principle.

If we turn to the defence, we might imagine Canadians were as willing to part with, as the United States is to acquire British territory, the only difference being as to the exact extent. This unexpected anomaly, is perhaps the result of an ungrateful conceit by Colonials, who imagine the Mother Country has always been prone to neglect their interests, and have consequently regarded the treaty with Russia, as a surrender of them. From the moment it was known the United States had purchased, Canadians have done their best to discredit the intention and terms of the treaty; they would hardly have served the purpose of the buyer so well, had they, instead of Russia received the money. This Treaty was intended for, and should have served as an impregnable line of defense, against any assault on British territorial rights. The disputed Boundary, as indicated by the precise and explicit terms of the treaty, was intended to define a strip of the coast in no part exceeding ten marine leagues in breadth. From the peculiar nature of the coast, consisting of a fringe of islands, this strip, was such that officers who surveyed it could traverse it in their ships, and observe it from the landward side, as well as from the ocean. By the American contention, this "strip" has been converted into the whole of the coast,

in addition to a strip of the mainland, more huge than the apparent motive of the treaty with Russia would have called for, even if the island fringe of the continent had been absent. A transformation by which British ships are actually blocked from access to their own continent, as completely as if Canning had not protested against the Russian Ukase of 1821.

Unfortunately for Canada, the defence of this position has from the first fallen into the hands of lawyers, who have shown themselves incapable of appreciating the precise meaning of the terms employed in the treaty; a matter entirely outside the scope of their professional training. They may be word perfect in the theory of the employment of geographical terms, but as soon as it comes to a practical application of the principles involved, it becomes evident that words which have a distinctive application are regarded as being of a similar meaning. The word does not, in fact, call up a distinctive picture in their minds of the thing it should indicate; it simply appeals to their imagination as a word written or printed in a document. That the distinction between such words as "coast" or "ocean" appears to be mainly alphabetical, may be an amiable weakness on their part; but by imitating the careless and apparently undesigned misuse of these terms by distinguished "American" diplomatists, they have effectively obscured the rights that Canada has now, to all appearance, lost.

Not the legal profession only is subject to this lapse of accuracy; examples of the methods by which this territory has been lost, may be seen in the editorial pages of such leading journals as "The Daily Mail and Empire," whose issue of Oct. 19 has two articles; "IS CANADA'S CASE LOST?"—"ALASKA'S BOUNDARY AS FIXED IN 1825."; in both the term by which the limitation of the Boundary is defined in the treaty is misquoted, and the explicit and appropriate word "Ocean", which does not readily lend itself to any ambiguity of meaning, has been displaced in favour of "coast", a word that has a wide range of significance that under "Yankee" manipulation, has come to mean almost

anything they may care to read into it. As connected with what may almost be called a national disaster, it may be interesting to know if this exchange of terms is made *of malice prepense*, or is, as a result of careless ignorance, purely accidental. To quote the Editor: "The more important point in the case is the line running north and separating the territory of Canada from that of the United States. This line, according to the Russian treaty, which governs, or ought to govern, is to be ten leagues or thirty miles, from the coast. The question the Tribunal has had to consider is, 'What is the coast?' There is a string of islands following the coast line. We contend that the shore of the islands is 'the coast', and that the thirty miles must be measured from that point. The United States holds that 'the coast' begins at the mainland, and that therefore the thirty miles covers an area much more extensive than that acknowledged by Canada."

Why has this information been witheld until the Award of the Tribunal has rendered it useless? As a matter of fact, the real question on which the adverse Award has been given is the INTENTION of the Treaty, and not on any difference of geographical definitions; the quibble about which became little more than a feint on the part of the United States, to divert attention from the real point of attack. The signing of the Convention at Washington, on the 14th day of Jan. 1903, placed the occupation of the Alaskan territory by the United States, under a more formal sanction than that resulting from the former complaisant indifference of Great Britain. Nothing was now desired but the formal repeal of that part of the treaty with Russia that made her occupation of the coast depend upon her faithful observance of Section VI of the treaty. And, even for this, the questions proposed for submission to the Tribunal were so cunningly worded, that acceptance by Britain of the proposal to discuss them, was practically equivalent to the abandonment of her territorial rights; even without the formal Judgment of the Tribunal. Had Canada refused to meet the notorious partisans, nominated, perhaps, to insure this result, the

United States would have remained in posession of all they claimed. The United States, on obtaining the assent of Britain to this Convention, immediately abandoned the claim to a tide-water limit of a ten league concession, which the Convention practically assured, and boldly challenged for the repeal of Art. VI of the Treaty, by which the territorial rights pertaining to all the waterways of the coast were reserved to Britain, for ever.

"Wisdom is justified of her children"!! The result of this boldness is to demonstrate that there does not exist in the whole legal and political service of Great–or Greater–Britain, sufficient logical acumen combined with technical knowledge, to discover that there has been substituted a new, "origen and principle of this whole negotiation", by which to interpret,–and stultify,–the old "negotiation about limits". No wonder the Anglo-Britannic races are unable to build asylums fast enough to accommodate their continually increasing madness! The same weird resemblance exists between the Award of the Tribunal and the Treaty, of which it is supposed to be a rendering, as there is between a medal and the die from which it has been struck; it is the difference, not the similarity. makes the likeness.

The gist of Question 5, relieved of the verbiage by which it is partially disguised, is simply: "In extending the line of demarcation northward, from the parallel of 54° 40′ of north latitude to the 141st degree of west longitude, was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean? The Tribunal answers: "Such is the intention." It was, probably, because the boundary actually claimed by the United States included more than was necessary to give effect to this exclusive intention, that, evidently by the judgment of Lord Alverstone, it was reduced in the Award, and assented to by the United States Commissioners as a necessary concession; a compromise, probably unsuspected by the Chief Justice him-

self. This Award is final; unless the newly developed sense of Imperial Unity should furnish a motive for the strenuous exercise of Imperial Duties: it appears to be the absence of this sense that provides the void in which the delusions of "free-traders" find their most ample scope for development. The local detail of the occupation of this territory, by either the United States or Canada, is of small importance, compared with the results that may follow a failure to realise the nature of the circumstances that have availed to change a treaty, negotiated by Britain to induce Russia to repeal, "an offensive and unjustifiable arrogation of exclusive jurisdiction." that threatened the stability of the same territorial rights that Britain has now surrendered unreservedly to the United States. A concession, that far from satisfying territorial greed, will only strengthen the determination to continue the same relentless system of extortion, as long as there is a fragment of British authority left upon this continent.

Interest in the Alaskan Territory, began with the writer as a school-boy some fifty years ago, on discovering with disgusted astonishment that Russia occupied a corner of what had always been considered a British possession. Aided by a retentive memory for geographic and historical details, the development of the Alaskan problem in later years, was followed with keen interest. The first impression upon Canadians, made by the news of the American purchase, was almost of consternation, resulting from what appeared the enormous value placed upon the acquisition; presaging some use in view that might be detrimental to British interests. The various attempts made between the two countries to settle the Boundary, were notable from the apparent difficulty of defining the intention of the treaty with Russia, as well as for the obvious determination of the United States to submit nothing to arbitration. These attempts were terminated by the forcible seizure of a portion of the disputed territory from the possession of the Canadian officials, the hauling down of the flag, and the collection of duties upon imports

by the United States. This violation of the obligations of Peace justified a conviction that the claim derived from purchase had not sufficient validity to sustain the scrutiny of disinterested arbitration.

Such, in the mind of the writer, was the condition of the United States title, at the time the final sanction of Britain was challenged, and obtained at Washington! It had appeared, that having possession by a final act of violence, the interests of the States would be best served by avoiding whatever would call attention to the nature of their occupation. Being, apparently, in secure possession of all they desired, what possible motive could there be to court inquiry and risk the loss of what they had? A conviction was gradually formed; there must be a consciousness of a flaw in the title that might suggest too close a resemblance to an act of piracy, to be at all safe when directed against a nation that has the WILL as well as the power to resent such injury. The Little England of the Free-traders was very different from Imperial Britain surrounded by a group of militant Colonies; South Africa was a revelation, not reckoned on when the British flag was hauled down at the port-of-entry to the Yukon. How far also in respect of the occupation of Alaska was the necessity of a friendly England, a restraint that compelled the United States to an unwilling neutrality during the Boer war? a restraint to be got rid of at the first favorable opportunity? How far, in fact, was this opportunity itself, arising as it did out of the Venezuelan incident, a result purposely led up to—of macinations, by which Britain was led into a false position by the suggestions of a mutual friend?

II

THE ANGLO–RUSSIAN TREATY.

The impotence of Canada's defence against the Alaskan claims of the United States, appears to have resulted, in the first place, from the failure of Britain to protest against the purchase of these claims, or to prevent the occupation of this territory without sufficient evidence of the right to do so. There can be no pretence that the tender of money, or its acceptance by Russia, can have made a title that Britain was under any obligation to respect. The territory was granted to Russia for certain considerations that applied to Russia alone ; had China, Japan, or Abyssinia, been the purchaser, it is almost certain the United States, even without any intention to purchase herself, would have resisted, by force of arms if necessary, any attempt of one or any of these nations to occupy the Alaskan territory ; and yet any of them, in many respects, would be a more desirable neighbour for Canada ; why then should the United States enjoy a privilege that would have been denied to others? By British neglect to protest against hostile occupation, Canada has been placed under the disadvantage of having to recover, instead of simply to defend her rights. Had Russia been in previous occupation, independently of the consent of Britain, her right to sell, or of the States to buy, would have been unquestionable, except upon the ground of the obvious unfriendliness of the intention. Here, unfortunately, Britain, as a result of her free-trade dogmas, has deprived herself of the most effective method of giving expression to a sense of international resentment without resorting to the barbaric inhumanity of offensive war. The United States have not been slow to discover, or scrupulous in

using, any means by which this primary and fundamental defect in their title might be either remedied or obscured.

If HISTORY, does not exist, what is easier—if time and the material inducements to action are available, and the United States had both for such a purpose—than to make such history as is in demand? There can be little doubt the purpose to use the negotations with Russia for the repeal of her offensive Ukase, as much to her own and as little to the advantage of Britain as was possible, was one of the considerations in making her own treaty with Russia in advance of Britain. The interest of each nation, that was affected by the pretensions of Russia, to forbid the freedom of the ocean, being of a similar character, while the territorial interests of the States were, if at all, scarcely affected; it would appear the interests of both might have been equally served by joint action; the States thought differently, and apparently had no difficulty in concluding a treaty with Russia. It was otherwise with Britain, as in addition to an "unjustifiable arrogation of an exclusive jurisdiction over an ocean of unmeasured extent," were arrogated unjustifiable claims over an unmeasured extent of territory. It is not impossible that the United States, to a certain extent, prompted Russia in this, for though ignored in the treaty that followed, these claims being found in the record have been adopted by Canada, as well as by the States, and accepted by Britain, as having more authority or credibility, than either have given to the treaty which Russia was finally well satisfied to accept.

There is no reason to suppose that any delusion respecting the precise meaning of the Anglo-Russian Treaty, has ever existed in the minds of those who have been responsible for the prosecution of the claims that have been made by the United States. There is too much evidence that the terms of the treaty have been studied with a thoroughness that commands admiration, though—to borrow a term of another trade—with the object of reducing them to a perfect "devil's-dust" of incoherence. They have been the authors, not the victims, of delusions as to

the rights of "immemorial" occupancy by the Russians; and so thoroughly have they, with the assistance of their opponents and fellow-workers, misinterpreted its purpose, that the Tribunal Award has left only a solitary memorial of its past existence. Gladly, no doubt, would the Americans have destroyed this also; except for some regretful consideration of the possibility that the treaty itself is the only indisputable evidence existing, that Russia had any territorial claims whatever upon the continent of North America. How these "expansionists" must have cursed the memory of men, who not satisfied by the proper names that lawyers, apparently, deem the supremely important index of location, should add the, comparatively, unimportant details of latitude, longitude, and compass bearings, that everybody does not understand, and which, lawyers particularly, in this adjudication, have failed to appreciate at their proper value. And yet this particularity, perhaps, has been the only circumstance that, in the case of "the southermost part of the island called Prince of Wales Island," has prevented the substitution for it of Vancouver Island, and the surrender of the whole Pacific Coast to the United States.

The conditions of the Alaskan Territory, both before and since the treaty with Russia had been made, have been such as to favour pretensions to an extension of the concessions that had been granted to them. As Senator Sumner, in addressing the United States Senate in 1867, said: "Perhaps, no region of equal extent upon the globe, unless we except the interior of Africa, or possibly Greenland, is as little known." During the negotiations for the treaty of 1825, Russia, while admitting that she had no establishments on the southerly portion of the coast, contended that "during the hunting and fishing seasons the coast and the adjacent waters were exploited by the Russian-American Company, the only method of occupation these latitudes are capable of." This, is an admission that should dispose of any pretence of such effective occupation by Russia as would justify the assumption of exclusive territorial rights. The Charter of

the East India Company or their trading operations, were never considered to have given them any territorial rights in India; these they acquired from the native inhabitants either by treaty or conquest. The Pacific Coast, allowing for the difference of climatic conditions, was as much in the effective occupation of its native races as was the Indian peninsula. To the time the United States assumed possession, neither Russia or Britain took any measures for the protection of their subjects; missionaries went there at their own risk, their personal safety depending entirely upon the relations they maintained with the natives.

By the Ukase of 1821, Russia strove to exclude any competition or interference with the fur trading that was carried on by her own subjects on the coast and islands of the north Pacific. As far as the freedom of the Ocean is concerned, Britain has the same right to protest as any other nation; it was the possible exclusion of her commerce from the continent or from the islands of North America, and the prejudice to her territorial rights that made this Ukase "an offensive and unjustifiable arrogation of exclusive jurisdiction"; this was the "PRINCIPLE", in respect of which Canning remonstrated. He was willing to negotiate about territorial limits to avoid inflicting upon Russia the "soreness and humiliation," that would result from compelling her to the formal repeal of an arrogation of marine jurisdiction that, possibly, might have more exclusive territorial results than had been anticipated. But, while in any parts of the treaty that have been published in support of the United States claims, there has been nothing to show that soverign rights were conceded to Russia, Canning was careful to introduce, in Art. VI. a clause, the effect of which should render the existing Ukase inoperative, as far as British subjects and territorial rights were affected. He was evidently prepared to experience, and ready to oppose any attempt to take advantage of the "voluntary facility" he was offering. It is astonishing, that Canning's letter to this effect should have been published by the writer of a treatise in support of the United States claims, and that the same letter should

have been misquoted in exactly the opposite sense before the Alaskan Tribunal, by the ATTORNEY-GENERAL; who, it is to be supposed, must have been primed to that effect by his Canadian brief; an incident suggestive of the comparative degree of care in the appreciation of the value of original documents, by the respective parties. THE TIMES report makes the ATTORNEY-GENERAL say: "George Canning insisted upon the boundary of the mountains as the limit of the *lisière*, but care must be taken that we do not assign to Russia immense tracts of inland territory where she only intended to ask for a strip of coast with respect to Sitka. Canning agreed to the term of ten years, subject to equal treatment in renewal of the term with other powers. (?) The negotiation, he said, was essentially about limits, and the British Government demanded the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an unmeasured ocean."

The following, from THE TIMES of Sept 4, is extracted as furnishing much useful information and some material for comment, from a paper the writer of which speaks of "our Canadian statesmen," but otherwise, much might have been written from Washington.

THE ALASKA BOUNDARY CASE.

(FROM A CORRESPONDENT.)

Until quite recently the occasions when Alaska has come before the public mind have been few and far between. The publication of the Russian Ukase of September 4, 1821, prohibiting all foreign vessels from approaching within less than 100 Italian miles of the coasts and islands belonging to Russia, including the whole North-west coast of North America, was one of these. Vigorous protests were made at once by both Great Britain and the United States. Russia framed excuses and procrastinations. Mr. George Canning and Sir Charles Bagot made use of all sources of persuasion, but seemingly without avail. An explosion seemed inevitable, and it finally came when the elder Canning wrote to Mr. Stratford Canning, who had succeeded Sir Charles Bagot, that, if Russia deferred any longer renunciation of her absurd claims to the monopoly of navigation within 100 Italian miles of her coasts, "she must not take it amiss that we resort to some mode of recording in the face of the world our protest against the pretensions of the

Ukase of 1821." The convention between Great Britain and Russia for settlement of all disputes between the two countries on the north-west coast of North America followed, it was signed at St. Petersburg, February 28 (16), 1829. The negotiators, in their correspondence, agreed to put on one side questions of prior occupation and all arguments based on strict right. On the Russian side were the posts and establishments of the Russian American Company, and on the other side those of the Hudson Bay Company. The main guide in laying down the line of dermacation was to draw it so as to separate the posts of the companies on the mainland and islands, so that a Russian post would not find itself inside British lines, and *vice versa.* This rule, however, was soon departed from. As the Russians possessed no trading posts upon the mainland, the line should have been drawn along the channels between the continent and the islands. They insisted, however, on having a fringe of coast opposite the islands, as a support to their island posts. This fringe was variously described in the negotiations as "*une portion de territoire sur la côte*," "*une simple lisière du continent*," "*un médiocre espace de terre ferme*," a "*point d'appui*," and "the strip of land required by Russia." This strip or *lisière* was conceded by the British. The British proposed an astronomical line or meridian of longitude. The Russians preferred a natural boundary. Sir Charles Bagot suggested the seaward base of the mountains which border the coast. The Russians replied that the base of the mountains might extend to the waters of the sea itself, and proposed the summit of the coast mountains instead of the base. The British readily agreed to this, but, as the treaty was being negotiated in St. Petersburg, far away from the territory in question, and on very slight geographical knowledge, they insisted that, should the mountains at any place recede more than ten marine leagues from the coast, the line for that space should be an artificial line drawn at ten marine leagues from the coast and parallel to its sinuosities.

The sentence: "The negotiators, in their correspondence, agreed to put on one side questions of prior occupation and all arguments based on strict right," appears to supply a key to one of the causes of failure, in a want of that sentiment of pride in the character of their diplomatic service that is usually felt by well-educated Britons. The source of this pride is in the maxim: First be sure you are right, then stick to it. The opposite sentiment is reasonable enough, as part of the game of casting discredit on the Treaty, by holding the declarations of British Ministers of less value than the exaggerated claims of Russians. The proper place for the man who would agree to put on one

side, "all arguments based on strict right", is behind a bargain counter. The inevitable effect of such a sentence, unless it is consciously condemned by a logical appreciation of the motives by which it may have been prompted, is to prepare the mind to accept the probability of any concessions to Russia, however plausible or opposed to the rights of Britain, or the eventualities of HISTORY. We may find from this account that the rights of Russia on the north-west coast of this continent, were of an even less substantial character than the United States might discover as a result of slave trading ventures in Central Africa. We see that in these negotiations, Russia was allowed the most ample opportunity, to revise and correct the terms in which the treaty was expressed, in such a manner as to clearly indicate the nature of the concessions that were made to her; so that it is safe to conclude that nothing was given that is not explicitly defined in the Treaty. The narative continues:

The "affair of the Dryad" in 1834 attracted British attention towards Alaska for a time. Notwithstanding that by the treaty of 1825 Russia had guaranteed Great Britain freedom of navigation of the riveru of Alaska for ever, in May, 1834, Barron Wrangell, a post captain in the Emperor's navy and principal superintendent of the Russian American Company's affairs on the north-west coast of America, opposed an armed force to Chief Trader Ogden, of the Hudson Bay Company, and prevented him proceeding up the Stikine river in the Dryad for the purpose of establishing a trading post inland. The Hudson Bay Company, in consequence, claimed over £22,000 damages to its business interests. Russia, after a long correspondence in which she sought to excuse the conduct of Baron Wrangell, finally offered full apology to Great Britain. The question of damages remained an open one until it was finally settled, in June, 1840, by the Hudson Bay Company's taking over from the Russian American Fur Company its lease of a portion of the coast. The Hudson Bay Company remained lessee of the territory until the cession of Alaska to the United States in 1867. Until 1867 the whole mainland coast and interior of Alaska remained a vast fur preserve under lease to one or other of the great fur companies. During the more than paternal rule of the Russian American Company, with the exception of the Dryad incident, not a sound had been heard from its distant shores. Nor has it ever been the wont of the Hudson Bay Company to attract attention to the vast dominions under its control. The outside world hardly knew of the exist-

ence of Alaska till 1867.

From the date of the treaty of 1825 until 1886 British vessels, in common with those of all other nations, navigated and fished in the non-territorial waters of Behring Sea without hindrance or protest. In the latter year the Thornton was arrested by the United States while fishing 70 miles south-east of St. George's Island. The vessel was condemned and the master and mate fined and imprisoned. The British schooners Caroline and Onward were seized about the same time in similar circumstances, and were afterwards condemned. Other seizures of British vessels by the United States in non-territorial waters followed. The charge was that they were found killing fur seals "within the limits of Alaska territory and in the waters thereof." Great Britain protested, and by the treaty of 1892 the jurisdictional rights of the United States in Behring Sea—the claim, in fact, that it was *mare clausum*—were submitted to arbitration. The Behring Sea Tribunal found that the pretensions put forward by the United States were absolutely without warrant of any kind. The Behring Sea Claims Commission subsequently, in 1897, determined the extent to which the United States was liable to Great Britain in respect of the claims on behalf of the owners, masters, officers, and crews of the different vessels at about half a million dollars. In 1892, Russia seized several Canadian schooners. Two of the seizures were decided to be irregular, and the Russian Government paid $40,078.75 compensation.

In the period following the signing of the treaty, all the conditions of the Coast were favorable to the extension of the Russian claims. Recent developments have shown that the United States was, perhaps, the conscious heir of all to which Russia could advance a claim; while Britain had no interests that called for official attention, or that were not confided to the care of the Hudson Bay Company. If Russia had any rights upon the Coast except such as resulted from the terms of the treaty, it is incredible she should have assented to an agreement that failed to explicitly admit them. The "affair of the Dryad," was a direct violation of the terms of the treaty, that, automatically, severed the bond under which Russia enjoyed reciprocal advantages, a severance that a simple "apology" was not sufficient to replace.

Russia, apparently, and probably the Hudson Bay Co. also, were conscious of this result, and the former seems to have placed so little value upon her rights under the treaty, that after hesitating several years, rather than pay the £22,000 damages,

such rights as they had were finally abandoned to the Hudson Bay Company. It is true, this account of the transaction has never been, nor was it likely to have been, published by authority; but let us, for a time at least, put aside sentiment, and look at the matter in the practical light of individual self-interest. The Hudson Bay Co. has never been accused of placing too high a value, as a commercial asset, upon an exaggerated sense of loyalty to the British Crown, or the national interests it represents.

It would be interesting to have more light upon the actual relations of the various Fur Companies that have carried on business in the North West Territories. If it has been an instance of the survival of the fittest, we may be certain it was not only by close dealing in furs, the H. B. Co. succeeded in remaining in possession till the last.

That Russia should give up her Alaskan claim, for a sum that now appears absurdly small, when compared with the value that the same claim apparently has since assumed, may be matter of surprise only because of our ignorance of the actual value then, to Russia, of the claims, when perhaps they were nothing more than simple trading rights over a mere "fringe" of the territory the United States have since succeeded in obtaining. The Hudson Bay Co. held the greater part of their trading territory under a lease from the British Crown, as tenants only, but whatever portion of the continent they could cover with the colour of a Russian concession, would, for all practical purposes, become their own freehold; from which they could exclude all competitors, by whatever measures of severity they chose to put in practice, as there would be no authority to which an appeal in mitigation could be addressed, or any legitimate power by which they could be restrained.

For such an "estate" the United States would be the only possible purchaser, and when the federation of the Canadas became imminent, now or never, would be the time for its accomplishment. As soon as the Dominion became established, and Canadian statesmen found time to look into the matter of the

relation of the Alaskan territory to the other provinces, they would have examined into the nature of the title by which the Hudson Bay Company held possession, and the precise character of the Russian claims would have become matter for dispassionate consideration. But when the United States, by the act of purchase, appeared to demonstrate their absolute confidence in the unquestionable soverignty of the Russian possession, Canada appears to have taken the evidence of title on trust, the more readily as their attention was completely occupied by the unreasonable and vexatious character of the claims and rights assumed by the purchasers. In addition to this, at the time of the purchase the "little England" policy of the free-traders was in the ascendant, and the dominant feeling with respect to the confederation of the provinces, was probably, one of keen disappointment at the passing away of their chances of being absorbed into the Union of the American States; as it certainly was of uneasy dread that, possibly, some display of inconvenient and unwished-for loyalty, might, in the near future, draw the Mother Country into a war for their defence. British statesmen, then, and possibly even yet, might be more willing to suppress than to discover any evidence of the temporary nature of the concessions made to Russia in the past.

The latter part of the extract from *The Times*, has been given partly for its general interest, and more particularly to associate it with an extract from Mr. Thos. Hodgins' recent pamphlet: "In Mr. Ex-Secretary Foster's Century of American Diplomacy, it is stated: 'Russia indicated a willingness (1845 to 1849) to give us its American possessions, if we would adhere to the claim of 54° 40′ on the Pacific, and exclude Great Britain from the continent.'" It will be observed, that the dates here given are included in the period of hesitancy in granting the same territory to the Hudson Bay Company; and we may note in this connection that, had the interests of the Company been ignored, by granting these claims to the States, they might have denounced the right of Russia to do so, thus putting a final

stop to this particular intrigue by these two conspirators against British rights in the Pacific. This statement of Mr. Ex-Secretary Foster, is interesting in its shameless avowal of traitorous "dickering" in respect to the vital interests of a country with which there is some pretence of holding friendly relations. When the dirty linen of "diplomacy" is ostentatiously aired in public, it is not unreasonable to suppose that dirtier remains to wash. On reflection, it appears more than probable that such an understanding had already existed between the two countries at a much earlier date, and that the publication of the offensive Ukase, was, itself, the direct result of a mutual understanding. Had Britain failed to protest, the Dominion, probably, would have found a "Russian" province extending to the Rocky Mountains, and blocking her access to the Pacific. We can quite understand, now, why "Russia", "preferred a natural boundary" instead of the astronomical line proposed by Canning. The astronomical line would be absolutely immovable, while both English and Americans have had experience of the uncertainty in locating unknown or insufficiently identified mountains. We can understand, also, the humane benevolence that sought to exclude the horrors of war from "Russian" America! This was an opportunity, when a simple proclamation and a boat's crew from a man-of-war, would have nipped the Alaskan difficulty in the bud, by asserting some British rights that should never have been left open to question.

The writer would be glad to give here, in full, the actual text of the Treaty, but it does not appear easy to get such a copy. In the agreement by which the United States claim to have acquired the title to the Alaskan territory, it is not Russia's Treaty with Britain that is transferred, but simply the delimitation clauses that are inserted ; so there is nothing to show under what terms or conditions these clauses apply. There is no map attached : the absence of so essentially necessary an adjunct to the documentary evidence of title to any real estate, the precise area and location of which may not more certainly

be defined by natural or astronomical boundaries, is, without direct evidence to the contrary, sufficient to prove the limitations to have formed no part of an agreement affecting the ultimate title; it is a lease not an assignment. Immediately complementary to this objection, there is a significant omission by the negotiators, of a clause proved to have been an object of their peculiar solicitude, as defining their tenure of the island named after the Prince of Wales. When, saying it "shall belong wholly to Russia," they omit the magic words "for ever," that change a tenancy into a freehold. The multiplicity of maps presented by the United States, have not the slightest value as showing the intentions of the parties to the treaty; they should rather serve to demonstrate the extreme facility with which an attested copy might have been attached had either party thought it desirable; evidently, both were of opinion that the natural and astronomical boundaries were sufficiently indicated in the text of the Treaty. To an un-professional student, nothing appears more astonishing, than that *such* claims should have been given the slightest consideration by Great Britain; while, in view of historic conditions, the failure to contest them is no proof of their validty.

If, failing documentary evidence of title by assignment from Britain, we seek for title by occupation, the result is equally unsatisfactory, because, a country as well known to a certain class of hunters, traders, and explorers, as even Alaska has been within these hundred years, must have a history. If the Russian claim is good, the more widely the history is known the better title she can give. The following incident may help to explain how it happens this history remains so little known, and to show the view taken of publicity by the United States. In the early summer of last year, on asking the proprietor of the largest second hand book-store in Toronto, for books relating to Alaska, the writer was informed, with rather an amused smile: "I do not think you will get any, the United States has been buying all they can get hold of on the subject". It would be idle to

suppose these books were wanted for any purpose, other than to prevent the probable contents being used in opposition to the success of their claims. The Reference Library also appears to be without information on the subject other than can be obtained through American channels.

Failing other methods, nothing remains but to discover from the wording of the Treaty itself, what were the actual conditions of the Russian occupation of Alaska.

In his "DISSENT" from the finding of the Tribunal, as reported by *The Times*, Mr.A.B.Aylesworth,K.C., states, in defining the meanings of the word "coast" as used in the treaty : "The preamble speaks of the possessions of the two Powers 'on the North-West coast of America.'" What are the precise terms in which they are spoken of? The validity of the American claim under the Anglo-Russian Treaty, depends largely upon the character of this, now apparently, the most conclusive evidence available.

This Treaty, is no informal agreement hastily made on the spur of the moment; all the evidence shows it to have been deliberately and carefully studied by both sides. If Russia had any reasonable claim to a portion of the continent of America, either on the mainland or the islands of the coast, NOW was the time to place the fact on record. "The possessions of the High Contracting Parties upon the coast of the continent, and the islands of North America to the north-west," are spoken of in Article III., but only as related to the line of demarcation that is to be drawn upon them. It is evident, from the contents of Article IV, that no other recognition of existing rights was either asked for or obtained.

Continuing from the DISSENT: "Article I secures to the subjects of both Powers the right to land for purposes of trade at any unoccupied places 'on the coasts.'" "Article II prohibits landing without permission at any establishment 'on the North-West coast.'" The following Articles, with the exception of Article V, which is taken from Harper's "Encylopædia of

United States History," are taken from Mr. Hodgins' recent pamphlet; and as they are supposed to be a strict translation of the French of the Treaty, they are printed in *italic.*

III. The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent, and the islands of North America to the north-west, shall be drawn in the manner following: Commencing from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54° 40', north latitude and between the 131st and 133rd degrees of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Chan- as far as the point of the continent where it strikes the 56th degree of north latitude; from the last-mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

IV. With reference to the line of demarcation laid down in the preceding article, it is understood, first, that the island called Prince of Wales Island shall belong wholly to Russia; second, that wherever the summit of the mountains, which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be of a distance more than ten marine leagues from the Ocean, the limit between the British possessions and the strip of coast (la lisière de côte), which is to belong to Russia as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of ten marine leagues therefrom (et qui ne pourra jamais en être éloignée que de 10 lieues marines).

V "It was further provided that neither party should form establishments within the limits assigned to the other, and spe-

cifically, that British subjects should not form any establishments '*either upon the coast, or upon the border of the continent (soit sur la côte, soit sur la lisière de terra firme) comprised within the limits of the Russian possessions.*' "

VI. It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the Ocean, or from the interior of the Continent, shall for ever, enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which in their course towards the Pacific Ocean, may cross the line (traverseront la ligne) of demarcation upon the strip of coast described in Article III of the present Convention.

There is an Article VII, which, has been very freely referred to during the debates before the Alaskan Tribunal, the actual wording of which is not given in the reports. But as Mr. Christopher Robinson, K.C., says, "it was clearly intended to confer reciprocal privileges of navigation over the inland waters of both Powers for ten years," it is probably the most important of any, as indicating the actual extent of the inland waters that were then supposed to belong to Britain. The direct claim of the United States, and practically, the contention of Canadians is, that Britain had no inland waters whatever. Pertinent to this is what Mr. Aylesworth says; still endeavouring to extract a definition of the meaning of the word "coast" as used in the treaty: "By Article VII. of the treaty the vessels of the two Powers, were for ten years to be recriprocally at liberty to frequent for purposes of fishing and trading all the inland seas, gulphs, havens and bays '*sur la côte mentionnée dans l'Article* III.'

What waters then are these, to frequent which the Russians were accepting from Great Britain a ten years licence?"

It is not intended at this place, to call attention to those phases of the treaty that were the special subjects of discussion before the Tribunal, but only to this: were the Russian "possessions" absolute, or only a lease, under which to withdraw "absurd pretensions," without loss of dignity or soreness?

The Ukase of 1821, was obviously to protect the sealing interests, and incidentally, to secure as much of the fur-trading &c., on the Pacific coast as other nations would allow. Britain protested, and Russia readily withdrew in favor of a State that had no particular grievance to complain of, but procrastinated with Britain, finally yielding only to a threat; which probably, had she not yielded, would have eventuated in an armed protection of the coast she would have appropriated. The Award of the Tribunal calls upon her subjects to believe, that in the zenith of her power, Britain, after forcing Russia to negotiate, had retired from the diplomatic contest, not only without having gained the revocation of the objectionable Ukase, but with the surrender of territorial rights far in excess of what the protest had been intended to defend. If Britain at this time did not lapse suddenly into dotage, there must be many a screw loose now, elsewhere.

Had the intention of the treaty been such as the Award has placed on record, it would have consisted of little more than the preamble and delimitation clauses, somewhat as follow: "Whereas, it is expedient to define the Boundary between the possessions of the Contracting Parties, that are situate upon the northwestern part of the American continent, it is hereby agreed: The islands upon the border of the continent that lie north of the 54° 40′ parallel of latitude shall belong wholly to Russia. Upon the mainland of the continent the Boundary shall be: Commencing at the mouth of the Inlet that lies upon 54° 40′ north latitude and between the 130° and 131° of west longitude, the line shall follow the northerly side of the said opening and of the most westerly branch thereof, as far as the high-water-mark of ordinary spring-tides shall extend, and from thence in a northwesterly direction at a distance not exceding ten marine leagues from the like high-water-mark in the various inlets to the westward, following the sinuousities thereby defined to the intersection of the meridian of 141° west longitude." Instead of an intention like this, which would be purely territorial in its

object, it is on record that the principal motive in demarcation was, to separate the various establishments of the Hudson Bay Company from those of the Russian American Fur Company; practically to prevent the mutual outrage that resulted from the trade jealousy of their employees; and also in a district that was remote from supervision, to limit the exploitation and settlement of Russian traders to a narrow frontier. This is obviously the object of the first two Articles, and the Vth, as well, which appears to contain the provision that, where by the terms of the delimitation any establishment belonging to either Company, shall find itself within the limits assigned to the other, its right to occupy therein shall terminate after ten years.

It is not surprising, that lawyers who appear determined to extend the soverign rights of Russia to the utmost extent, should be reluctant to draw attention to the actual wording of these Articles. Why should Britain "specifically" engage, that her subjects should not form any establishment within the limits assigned to Russia? Why fail to engage that they should not form such establishments in any other part of the Russian Empire? Because, the Anglo-Russian Treaty does not recognize this territory as part of the Russian Empire. Britain engages that her subjects shall form no settlements within the limits assigned to Russia, from the same motive that demands the covenant in a lease that a tenant shall have quiet possession, while observing the conditions of his occupation. Article V. in such indirect terms as would be least offensive to Russian arrogance, is a distinct assertion and recognition of the soverign rights of Great Britain over the territorial limits assigned to Russia for certain purposes.

III.

THE ALASKA COMMISSION.

It is now proposed to discuss the formation and proceedings of the Alaska Boundary Tribunal, and for this purpose the text of the Convention and proceedings of the Commission, as reported in *The Times Weekly Edition*, will be made use of as far as they appear to throw light upon those questions to which the reader's attention is particularly directed. Under date of Oct. 23, 1903, the following is "THE TEXT OF THE AWARD."—

Whereas by a Convention signed at Washington on the 24th day of January, 1903, . . . it was agreed that a Tribunal should be appointed to consider and decide the questions hereinafter set forth, such Tribunal to consist of six impartial Jurists of repute, who should consider judicially the questions submitted to them, each of whom should first subscribe an oath that he would impartially consider the arguments and evidence presented to the said Tribunal, and would decide thereupon according to his true judgment, and that three members of the said Tribunal should be appointed by His Britannic Majesty and three by the President of the United States:

And whereas it was further agreed by the said Convention that the said Tribunal should consider in the settlement of the said questions submitted to its decision the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias, under the date of the 28th (16th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March, A.D. 1867, and particularly the Articles III., IV., and V. of the first mentioned Treaty, and should also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of the said Treaties so far as the same tended to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said Treaties:

And whereas it was further agreed by the said Convention, referring to Articles III., IV., and V. of the said Treaty of 1825, that the said Tribunal should answer and decide the following questions:—

1. What is intended as the point of commencement of the line ?

2. What channel is the Portland Channel ?

3. What course should the line take from the point of commencement to the entrance of Portland Channel ?

4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points ?

5. In extending the line of demarcation northward from the said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of ten marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich ?

6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière*, which was to belong to Russia, be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that, where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured *(a)* from the line of the general direction of the mainland coast, or *(b)* from the line separating the waters of the ocean from the territorial waters of Russia, or *(c)* from the heads of the aforesaid inlet ?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary ?

There follow the names of the Commissioners, and then :–

"Now, therefore, we, the Undersigned, having each of us first subscribed an oath, as provided by the said Convention, and having taken into consideration the matters directed by the said Convention to be considered by us, and having judicially considered the said questions submitted to us, do hereby make Answer and Award as follows:— "

It has—on page 6 of this treatise—been suggested, that the questions proposed had been formulated as much in view of the probability of the Canadians refusing to meet the Commissioners appointed by the United States, and thus letting their acceptance go by default, as in view of a solution being arrived at by the deliberations of the Tribunal itself. The questions are not asked with the intention of throwing light on the terms of the treaty, but with the intention of substituting others more favorable to territorial expansion by the States.

The first question : " What is intended as the point of commencement of the line ? " is answered not only with a verbal description by Art. III, but with the addition of latitude, 54° 40′, and longitude described as " between the 131st and 133rd degrees, " west of Greenwich. It must not for a moment be supposed that the difference in the precision of these two terms has any relation whatever to their comparative importance in defining the exact location of the starting point of the boundary line. To find the exact latitude of any place is one of the simplest problems of nautical astronomy, requiring nothing but a good sextant, a clear day and a steady hand, to obtain, with the data from a nautical almanac, the local noon and latitude. To get the longitude with equal accuracy, demands some means of obtaining, for comparison, the true time at Greenwich also ; the means of doing this are better now than when this treaty was made, and that maps still show this point (Chacon) to be exactly under the meridian of 132° west longitude, equally between the limits of error allowed, is evidence of the great care taken in locating it. There is another point, (Muzon) on an adjacent island in almost the same latitude, but very nearly a degree further to the west. For reasons they have not stated, this point is preferred by the Americans ; the British, however, do not appear to have troubled themselves to enquire into the possible motives that might have suggested this preference. It is clear, from the correspondence, that Russia desired the possession of both points, which the treaty grants ; but for some reason in

the purpose of delimitation, Cape Chacon has been chosen rather than the other : what are these reasons?

As affecting the United States two motives appear probable, one "moral", the other practical. The United States, suggests a point of commencement that—unless the sanity of the negotiators of the treaty is called in question, either openly or impliedly, by the members of the Tribunal, or the advocates of either or both parties to the controversy it was intended to terminate —is, obviously, not the point designated by the treaty. There is not even a plausible reason given for the change, and yet every "impartial jurist," being upon his oath to decide "according to his true judgment", has been induced to decide by some other consideration, and renders what must be known to any rational discrimination as a false judgment upon the very first question presented to the Tribunal. This is a great point in favour of expansionist ideals, for what reason is there to suppose that any other question will be considered more judiciously?

The practical reasons for suggesting the change may be more complicated ; this is the first question proposed, and if the change is accepted simply as a concession to affability, it is an augury that the Tribunal may be depended upon to alter any other condition of the treaty that is objected to. If the change is opposed on a literal or technical understanding of the terms of the treaty, the delegates may be prepared to dispute the point with any show of un-reason that would serve to cast upon the British, the blame of failure to come to an agreement on a point that would, they might say, have no practical effect upon the actual location of the Boundary line. To mark a parallel of latitude, either point doubtless, to the British, would appear to answer equally well ; but, while Cape Mazon marks nothing but the latitude, Cape Chacon also marks the point from which the boundary line should "ascend to the north".

It is impossible—as the Americans have proposed—to divide the terms of this treaty into a series of water-tight compartments, to deal with each apart from its relation to others ; the

substitution of Cape Muzon makes the second term of the delimitation useless and impossible ; and, by making the second question proposed to the Tribunal turn on the identity of the "Portland" Channel, instead of the direction in which the boundary line should leave the point of commencement, the "impartial jurists" are given an opportunity–or excuse–for ignoring this important feature of the treaty also. The United States may have thought it more prudent not to ask for a second violation of its explicit terms, before suggesting some plausible reason in justification of doing so. A true answer to this question can only be arrived at by asking : what function does "the channel" serve in the treaty ; what means, other than the name—which is purely artificial, arbitrary and unnecessary in the presence of physical distinctions—are given, by which it may be recognised ? A reference to the map, guided by a comparison with the text, demonstrates, that no other channel will answer to the terms of the treaty except the Strait separating the island from the mainland. The function of the channel is to carry the boundary line from the point of commencement, to "the point of the continent where it strikes the 56th degree of north latitude"; in such a manner as to leave the island wholly within the Russian limits ; where is this point situated ?

It has already been shown how simple is the problem of finding the latitude of any place ; this simplicity, by the old-time ship-master, was, more than it is at present, used as the basis of the art of navigation. From British or any other ports, he would boldly shape a course through mid-ocean, until he found his ship upon the latitude of the port or passage he wished to enter, he would then work east or west along that parallel, until he reached there. If the wind was fair, he would sail along with the latitude under his keel ; if it was contrary he would brace up to meet it, beating against it, "long leg or short leg", always aiming to be on the line for his midday observation. Day after day, week after week, perhaps month after month, the ever present imaginary parallel, would, in his isolated solitude, appear more

real to him, than the vague and sometimes receding continent suspended in the distance. Where the landsman would say, if he wished to express the idea at all, "the line strikes the continent," the seaman says, "the continent strikes the line". And, to him, that point would be the same his ship would strike, if he did not make his land-fall with discretion, or allowed himself to imagine that, under any conditions whatever, any outlying islands might be considered as being anything but an integral portion of the continent to which they belong. To the men in charge of a ship, the coasts of the continents that bound the oceans must constantly be the subject of reminiscence, both as they first appear in the distance and as they unfold on a near approach, their physical features appeal in a very different manner to the observation of a seaman than they do to even an observant person who is only a passenger ; and, when a seaman speaks of "mountains, which extend in a direction parallel to the coast", we may be certain they have been seen, not guessed at To him, above all other men, the vital necessity of truth, in this respect, precludes the fantasy of lying.

United States "diplomatists" have never lost an opportunity of depreciating the services of the naval element in the selection of the method by which this boundary has been defined ; and so much do their plausible objections appear to have dominated the direction of Canadian official investigations, that there is no indication of naval experts or hydrographers having been consulted as to the meaning of the disputed clauses. These may appear hopelessly obscure and impossible when applied to such territorial pretensions as the United States have advanced ; but, had the limit they indicate been the western, instead of the eastern boundary of their possessions, the only objection from them would have been, that the "strip of coast" was so ridiculously narrow it would be to the interest of both countries to abolish the distinction altogether. The terms in fact, are so precise and explicit in their technical meaning, that as an examination problem, they should be capable of correct solution by any candidate

fit for a second mate's certificate. But in *Juridical proceedings*, Britain appears to have discovered a method of giving away all that her statesmen and soldiers have gained in the past. Had the settlement of the dispute been left to the members of professions who learn to obey orders, instead of to quibble about their meaning, we should not have seen a Judicial Tribunal leaving the plain deductions of common-sense from the records of history, to say nothing of the geodetic data of a treaty the ink of which is hardly dry, to follow the suggestions of an aggressive disputant to a boundary that violates every consideration on which the treaty was based.

If the intention of the treaty, as claimed by Canadian counsel, had been to define and acknowledge the *possession* by Russia of territory upon the mainland, in addition to her undisputed possession of the outlying islands, to select a point on one of these a hundred miles or so away, as the commencement of the boundary of the strip upon the mainland, would be an act of folly not to be expected from the vagaries of one lunatic, far less from the united counsels of the statesmen of two great nations.

Had the channel, defined by terms of latitude and longitude, as well as by a compass direction of its course, been left unnamed in the treaty, it might have added to the difficulty of substituting what appears to answer to one of these terms only, but there is little reason to suppose it would have prevented the change. It is plain from the history of the case, this treaty has never been studied with a serious intention of finding out what its terms of delimitation really mean ; it has been used only as a mine from which to dig evidence of the careless incompetence with which British officials treat colonial affairs.

The ATTORNEY-GENERAL quotes Vancouver's narrative :—

"In the forenoon we reached the arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I have named Portland's Canal." The *Canal* of the Award, has several entrances but nothing that can be called a *source* ; for this means the origin of the body of

water that empties through it. Thus, between Prince of Wales Island and the promontory of the mainland, which are parts of the barrier that retain the inland sea, the narrow strait is the *source* of the stream that empties into the ocean, through the *Channel* to which the definitions of the Treaty have given the name of "Portland". No sailor like Vancouver, wishing to do it honour would have appended the name—as we have it now—like a tail, to the inferior opening of an "inlet" called after the commonplace and strictly useful purposes of an observatory. It is too much like the studied insult of draping an enemy's flag under the ship's counter, in a manner suggestive of its use as a sort of nautical breech-clout.

Under the heading : "LORD ALVERSTONE'S JUDGMENT."—*The Times*, in its *Weekly Edition* of Oct. 23, 1903, contains his "answers to the crucial questions—the second and fifth—which the Alaska Boundary Commissioners had to decide." In view of the strictures that have been passed, it is tempting to give his answers in full; they show a careful and impartial consideration of the evidence as it was presented before the Tribunal, of which certainly he was the only really disinterested member.

"After the most careful consideration of every document in this Case, I have found nothing to alter or throw any doubt on the conclusion to which I have arrived, and there are certain general considerations that strongly support it.

That the latitude of the mouth or entrance to the channel called Portland Channel, as described in the Treaty and understood by the negotiators, was 54° 45′. . . Russia and Great Britain were negotiating as to the point on *the coast* to which the Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations, but it is distinctly established that Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object that Portland Channel, which issues into the sea at 54° 45′, was conceded and ultimately agreed to by Great Britain. No claim was ever made by Russia to any of the islands south of 54° 45′ except Prince of Wales Island, and this is the more marked because she did claim the whole of Prince of Wales Island, a part of which extended to about 54° 40′. The islands between Observatory Inlet and the channel, to which I have referred above as Portland Channel, are never mentioned in the whole course of the negotiations."

In other words, the two small islands are given to the United States, not so much because of their location with respect to the entrance of Portland Channel, as that they are to the north while others are to the south of the parallel of latitude that all parties to the Award had agreed upon, as the southerly limit of "the strip of coast which is to belong to Russia." It is to be observed, that the only contention as to the second question before the Tribunal is, as to which of two waterways, marked respectively upon the map as "Observatory Inlet" and "Portland Channel," is the Portland Channel of the Treaty. These are separated from each other by a string of four islands, lying along the north-westerly side of what appears to be, but for their presence, a single inlet; the Portland Channel of the Award is much the least of the two, both in breadth and depth of water. The Award gives the two western islands to the United States, and the two eastern and almost incomparably larger islands to Canada. Had Britain intended to assign such a strip on the mainland, there is little doubt the larger, or Observatory Inlet, would have been chosen, as giving all the islands to the section of the continent to which, geographically, they belong

But the Portland Channel of the Award, besides being altogether outside the treaty limits of the concession, as explictly defined in terms of latitude and longitude—though it may be properly designated a "channel", because it separates islands from the mainland or from each other, and is longer than it is wide—is after all, only a portion of the waters of an inlet through which it is impossible to approach the point of the continent where it strikes the 56th degree of north latitude.

It is true, the Americans have discovered a point on the 56th parallel, that suits their purpose very much better than the point defined by the treaty, and the Tribunal has granted it with as much facility as it did the change of the commencement of the line, notwithstanding the fact that it is certainly two degrees, while only a doubt might be raised that it is not actually more than four degrees east of its true position.

To a matter-of-fact perception there is nothing more striking than that the question of longitude has been ignored in the proceedings of the Tribunal ; it is almost conceivable that the word itself has never been introduced in the discussions. And yet the dispute, as far as it turns on geographical issues, is a question of longitude : How far to the eastward does the boundary extend ? Commencing from the southernmost part of Prince of Wales Island, which point lies in the parallel of 54° 40′ of north latitude and under the 132° of west longitude, the said line *shall ascend to the north*, following the channel "as far as the point of the continent where it strikes the 59th degree of north latitude." As from this point the boundary line is to follow the general direction of the coast, at a distance in no place exceeding ten marine leagues from the Ocean, and this direction being nearly north-west; it appears to be the definite purpose of the delimitation that Prince of Wales Island should be itself the extreme limit of the Russian concession to the south and east.

The 5th QUESTION, is in fact a compound of what should be two distinct considerations ; it is a cause of surprise to find in the opening words of the next question a suggestion that the expected answer should be simply, either "yes" or "no." For while dealing, apparently, only with the geographical aspects of the strip of coast, the introduction of "exclusive" before the word "possession", raises the question of the motive, or intention, with which the possession of this strip is confirmed to the United States. That is to say, if the answer is "Yes," it signifies the formal consent of Canada, as well as of Britain, to the voiding of Article VI. of the pre-existing treaty ; by which the free navigation of all rivers and streams crossing the strip, was reserved to Great Britain for ever. Absolutely without the restraint of any scruple of honour or self-respect, as is the diplomacy of the United States in its calculating mendacity, when anything is to be gained by lying ; it lacked the "nerve" to make this purpose of trade "exclusiveness" a distinct and un-mistakable issue before the Tribunal ; but as soon as the Conven-

tion by which these questions, as formulated, were accepted as the basis of discussion—was signed, the newspapers, periodical press and occasional publications of the country, with an unanimity that suggested official inspiration ; asserted in a manner indicating anything but a friendly feeling towards Great Britain, that the object and intention of the Anglo-Russian Treaty was to put Russia in possession of such a continuous strip upon the coast as should make commercial access to tide-water by British subjects impossible. That the United States having bought the concession from Russia with this understanding and with the intention of making the exclusion effective, it would be the duty of the Tribunal where the territorial limits were not sufficiently explicit, to amend them in the sense and intention of the treaty.

These assertions, constantly reiterated in a manner that was obviously intended to educate Public Opinion in Canada and Britain as well as in the United States, were allowed to pass without opposition or disapproval, expressed either officially or through the newspapers. Before the Tribunal even, the assertion of an exclusive intention in the Treaty appears to have passed without notice by the Counsel engaged. It has been said in praise of British persistence, "they never know when they are beaten." ; it appears equally true there are occasions when they do not even know they are kicked !

Probably, to obtain from Britain an official sanction for the assertion of exclusive possession as the purpose of the Anglo-Russian Treaty, was the most urgent motive that induced the United States to submit their Alaskan occupation to a discussion that was carefully limited to further only their own interests. Because, though apparently in undisputed possession of the utmost they could hope to obtain, not only of limits, but of the extortionate uses to which they might be applied ; they would —as long as the Treaty under which they professed to occupy had any semblance of vitality—unless they retained the confiding friendliness of Britain, always be liable to a demand that the reciprocal obligations of the Treaty should be observed.

In other words, United States diplomacy was keenly alive to the consideration that as soon as the British people realized the true character of the *political* friendship of each nation, there would be an imperative demand that the VIth Article of the Anglo-Russian Treaty should be scrupulously observed in the future ; perhaps accompanied by a claim for a refund of the extortions of the past. In vain then, would the United States plead the professional delusions of the Law Officers of the Crown, that Russia might "revoke" her reciprocal grants to Britain while selling the "possessions" in requital of which they were given—to the United States. (Do members of the Legal Profession imagine they can import into International Law the legal fiction of innocent holders of fraudulent acceptances ; by which they have made their assumption of "JUSTICE" stink in the nostrils of Common Sense ? The rule, that any John Bull of a Farmer who—without legal advice—is fool enough to put his name to paper that may be fraudulently altered to his disadvantage, forfeits thereby his right to the protection of THE LAW !)

Had the United States taken possession of the Alaskan Territory without any pretence of having purchased a right to do so, she would not have been bound by the provisions of a treaty she has appealed to for a sanction ; while apart from any obligation of International Law Britain would have no right to complain of any extortionate use that was made of a possession she had not contested. But, until the stipulations of this treaty in her favour are specifically resigned and abrogated by herself, they remain valid, any pronouncement of "LAW" ! to the contrary notwithstanding : to a Free Country there always remains an appeal from the imagination to the reality of Power.

Being alternative the 5th and 6th Questions before the Tribunal must be considered conjointly, it will not do to answer either without a thorough understanding of what is involved by both. It should be evident that the negative suggested by the opening words of the last question, is a negation of the assertion of "exclusiveness" contained in the first, and does not relate to

the geographical suggestion by which this nauseous insinuation is sugar-coated ; these suggestive questions are here repeated in minuter detail, so that if they lose on the question of the admitted exclusiveness of their possession, they may miss no chance of obtaining the territorial concessions by which this exclusiveness may be maintained ; well understanding, that if anyone stood on her own corns, Great Britain would not wait for relief till the aggressor was at leisure to listen to a suggestion to "move on".

It is evident from the substance of LORD ALVERSTONE'S JUDGMENT, in answer to the 5th Question, that he was either unconscious of the application to the commercial interests of Canada of the exclusiveness it asserted, or that he admitted this to be the intention of the Treaty ; the closing paragraph of his answer implies that the latter is the correct interpretation of his convictions. He must have considered it his duty to form an opinion entirely by the evidence presented before the Tribunal, apart from any prepossessions of his own that might be derived from general knowledge, or from any independent investigations he might have undertaken.

It appears there is here a contributory cause of the loss we have sustained ; the Canadian case seems to have entirely neglected this assertion of exclusiveness, by which the objects and provisions of the original treaty are actually reversed. This, in fact, was the only really vital question that was before the Tribunal ; it is difficult to find an excuse for this neglect unless in a conviction that this question was one of those that had been excluded from consideration. No doubt the United States strove to produce this impression, but in an obscurity that is perhaps not in keeping with its importance, the assertion is sufficiently in evidence to justify an assumption that the Tribunal has deliberately answered this question in the affirmative.

It is no question NOW between the two countries, as to what the intention of the former treaty may have been, but what was the intention and meaning of the Tribunal at the time

the Award was given ; the asssumption of an exclusive intention was utterly untenable in face of the incidents developed by the Dryad affair. And though it is not to be supposed that any other consideration than the interests of the United States, would affect the Judgment of the Commissioners they sent, a sufficient exposition of the falsity of this pretence would have convinced the world of the nefariously extortionate nature of these claims upon the territory and commercial freedom of Canada.

Even could it be shown, that the Boundary of the Award has the remotest resemblance to the Boundary of the Treaty, its spirit would demand that British subjects should have free bonding privileges and access through such concession, by rail or other customary modes of transit, to or from British ships lying in the harbours of the coast, and be liable to no other charges than would be collected from the subjects of whatever Power might, by any change of ownership, be in occupation of the same territory. Such freedom of transit, appears so inherent a right to enjoy and duty of civilization to grant, that its refusal from no better reason than an extortionate intention, is sufficient to justify any method of warfare by which the right may be recovered.

We may consider then, that what has been answered in the affirmative as the 5th Question, is simply : In extending the line of demarcation northward—was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous strip of coast on the mainland, from the 56° of north latitude, to the 141° of west longitude, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean ? And also, that the 6th has been answered in the sense that the width of the strip is to be measured from the heads of the inlets.

Shortly stated ; the difficulty in locating this part of the boundary line, is the meaning to be attached to certain geographical terms as used in the treaty. There are three almost equally misused by the disputants and misunderstood by the public,

they are "ocean", "coast", and "continent"; the three include the water, the land, and the line of contact that equally separates or joins them; all in fact that is contained in the Treaty.

The writer remembers as a boy at school, finding the first chapter of the class geography occupied by the definitions of the meanings and use of the terms employed. It would not be surprising to find that for the last sixty years, and under the guidance of American ideals, these definitions—in anything like a precise form—have been omitted from the text books used in Canadian schools; while much ingenuity has been devoted to depriving some of these terms of their distinctive meaning.

There is no ambiguity about the meaning of the word "ocean", it always means THE OCEAN and nothing else. Lawyers may apply the same processes of reasoning to the OCEAN, as Theologians do to the "substance" of the DEITY, and imagine they can introduce through tortuous channels into their own backyard, a body of water that in its narrowest part is thousands of miles wide; but when they have done it to their own satisfaction, the OCEAN remains as it ever was. So with the word "coast", this is the rocky margin of the land, which holds back the ceaseless warfare of the waves from further encroachment. The idea expressed in the word "coast" is so exclusively appropriate to the OCEAN, that the term "ocean coast" would be almost as superfluously absurd as would be "foot heel" applied to human anatomy; the word may be borrowed from the ocean, but in this case it must be prefaced by the name of that to which it is lent, as the "sea coast". Its inherent character is not altered by the careless omission of the words that should express the *neighbourhood* of the COAST; "a strip of coast" conveys an idea that can be correctly defined only by a paraphrase, as, "a strip of territory bounded on one side by the coast". In this sense, Lord Alverstone is correct in objecting to accept "the word 'coast' being used with two meanings in the same clause;" the "coast" of the Treaty, whatever form of expression is used, is simply the line of contact between the ocean and the continent.

The use made of the word "continent", by which the English people designate the mainland of Europe, as distinguished from the island they inhabit, affords some justification for a similar application of the term in relation to the northwest coast of America ; but this use of the word, even in England, is colloquial rather than technical. On the Atlantic coast the islands of Newfoundland and Nova Scotia are considered as part of the continent, though they are much larger and more detached than are the islands on the part of the Pacific coast in question.

Lord Alverstone, as does every one else in relation to this dispute, appears to understand the word "continent" as having been used with the intention of distinguishing the mainland from the islands by which it is bordered ; this is a misuse of the word that makes it very difficult to follow his reasoning, and more difficult to state some objections thereto, and quite impossible to arrive at a correct understanding of the terms of the Treaty, as the word does not appear to be used in this sense therein.

If the word "continent" as used in the Treaty, is to be understood as "mainland" in this exclusive sense, it follows that the expression "coast of the continent" must be understood as meaning the coast of the mainland ; and in consequence, as the "coast" is the landward limit of the Ocean, the "ocean" of the Treaty must be considered as including the islands and the channels by which they are separated from the mainland.

Mr. Ch. Robinson, K.C., in his address before the Tribunal, states : "It was admitted on both sides that the Treaty intended Russia to have the islands." In his "DISSENT" Mr. Aylesworth says : "In this treaty the Powers were, with reference to the *lisière*, dealing with mainland coast alone, and in that regard, speaking and contracting exactly as though no islands existed and as though the shore of the mainland was washed by the open sea." In acknowledging the receipt of a paper, he also states : "The diplomatic correspondence preceding the Treaty clearly demonstrated that Russia insisted upon—and England conceded—a strip of mainland along the coast of the Continent in addition to

the islands north of the 55° of north latitude. Great Britain was not to have any part of any of the islands north of the boundary line which starts from the southernmost point of Prince of Wales Island." It is unfortunate that no one in connection with the Award of the Tribunal has placed on record the exact words of the correspondence on which this conviction is founded.

The writer, with a view to discover if it is possible to condense the argument, has given considerable attention to Lord Alverstone's answer to the 5th Question ; the following is an attempt to express these reasons somewhat more concisely.

"Stated shortly, . . I have come to the conclusion . . that the boundary . . was to run round the heads of the inlets, and not to cross them.

The language of the Treaty of 1825 does not of itself enable this question to be answered distinctly—on the contrary, it contains the ambiguities which have given rise to the discussion upon the one side and the other.

Paragraph 2 of Article III. states that the line of demarcation shall follow the summit of the mountains situated parallel to the coast. It is in my opinion correctly pointed out, on behalf of the United States, that the word "coast" is an ambiguous term, and may be used in two, possibly in more than two senses. . . This is the clause upon which the question really depends. . . Article IV., however, is of importance, as it may tend to throw light upon what was the meaning of the word "coast" in Article III., and the words in paragraph 2 of Article IV. are 'wherever the summits of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at a distance of more than ten marine leagues from the ocean.' . . There cannot be any question that the word "coast" in Articles I. and II. refers to the north-west coast of America. In Article III. the opening words "upon the coast of the continent" also refer to the north-west coast of America. The first ambiguity arises upon the word "coast" in the phrase "parallel to the coast" in the description of the boundary in Article III., and as to the word "coast" in the words "parallel to the coast" in the second paragraph of Article IV., and the words "the line of coast" and "the windings of the coast" in the same paragraph. Article V. does not bear directly on the question in dispute, but the words "or upon the border of the continent" (*lisière de terre ferme*"), which follow the words "upon the coast," afford some slight guide to the meaning of the word "coast" in Article III. The word "coast" in Article VI. evidently means the coast of the continent as it is in contrast with the words ocean and the interior.

Considering these various passages, and the use made of the word

"coast" therein, do they enable one, without reference to the previous negotiations, to answer the question as to whether the strip of territory mentioned in Article III, was to run round the heads of the bays and inlets, or to cross them? I am of opinion that they do not. The broad, undisputed facts are that the parties were engaged in making an agreement respecting an archipelago of islands off the coast, and some strip of land upon the coast itself. The western limit of these islands extends in some places about 100 miles from the coast, and the channels or passages between the islands and the coast are narrow waters of widths varying from a few hundred yards to 13 miles. In ordinary parlance no one would call the waters of any of these channels or inlets between the islands, or between the islands and the mainland, "ocean." I agree with the view presented on behalf of Great Britain, that no one coming from the interior and reaching any of these channels, and particularly the head of the Lynn Canal or Taku Inlet, would describe himself as being upon the ocean; but upon the other hand, it is quite clear that the Treaty does regard some of these channels as ocean. For instance, to take points as to which no question arises between certain islands, all of which are north of latitude 55°, it cannot, I think, be disputed that, for the purpose of the Treaty, the waters between these islands and the mainland were included in the word "ocean," and that the coast upon which the eastern boundary of the *lisière* was to be drawn was the coast of the continent, and the mountains referred to in Article III. were to be upon that coast, and the line referred to in paragraph 2 of Article IV. was to be measured from those waters. This consideration, however, is not sufficient to solve the question; it still leaves open the interpretation of the word "coast" to which the mountains were to be parallel.

Now, it is to be observed that *prima facie* the eastern boundary is to be fixed under Article III.; as already pointed out, it is not necessary to have recourse to Article IV. unless the mountains which correspond to those described in Article III. prove to be at a distance of more than 10 marine leagues from the ocean. Assuming that the boundary is being determined in accordance with Article III., the mountains which are on the continent are to be parallel to the coast, and a person fixing the boundary under Article III. would not leave the line which follows the summits or crest of the mountains unless that line was situated at more than 10 marine leagues from the ocean. As I have already pointed out, for a considerable part of the distance referred to in Article III., namely, from the southern end of Wrangell Island up to the northern end of Kupreanoff Island, the distance must be measured from the shore of these inland waters, which, and which alone, are the ocean referred to in Article IV. I am unable to find any words in the Treaty which direct that the mountain line contemplated by Article III. shall cross the inlets or bays of the sea. In so far as the language of Article

III. of itself is a guide, it does not seem to me to contemplate such a state of things. Of course, if the main contention of Great Britain can be adopted, viz., that the words, "line of coast" and "windings of the coast," in paragraph 2 of Article IV., should it be necessary to have recourse to that paragraph, mean the general line of coast or the windings of the general coast, the difficulty would disappear, but, in order to establish that position, it seems to me that Great Britain must show that the Treaty uses the word "coast" in the second paragraph of Article IV., in that sense

I see some broad objections to this view. In the first place, it necessitates the word "coast" being used with two different meanings in the same clause, and, secondly, it makes it necessary to assume a view of the geographical position as being known to the negotiators, or to postulate that they assumed some definition, or common understanding, as to what the general line of the coast was. There is, as far as I know, no recognized rule of international law which would by implication give a recognized meaning to the word "coast" as applied to such sinuosities and such waters different from the coast itself

As I have said more than once, the *locus in quo* to which the Treaty was referring precludes the possibility of construing the word "coast" in any particular Article in any special way, if it does not refer to the coast line of the continent. I think the words "upon the border of the continent (*lisière de terre ferme*) comprised within the limits of the Russian possessions" in Article V. rather confirm the view that Russia was to get a strip all along the continent, but I do not think that much reliance can be placed upon this because of the provision as to rivers and streams in Article VI.

This appears a convenient point at which to break off and sum up the result of the arguments so far presented. Both the contending parties having come to a common understanding, that the *coast* basis of the boundary line is the salt water limit that is formed by the channels that separate the islands from the mainland ; nothing remains to the Tribunal but to settle the difference that exists as to the character and extent of the "windings" of the *coast* that are contemplated by the terms of the Treaty. As presented before the Tribunal, the question regarding such waters as the Lynn Canal and Taku Inlet, appears to have been narrowed simply to this : are they "Ocean" or Land ?

Lord Alverstone says, "I am unable to find any words in the Treaty which direct that the mountain line contemplated by Art. III. shall cross inlets or bays of the sea." Mr. Aylesworth

objects to this verdict, and in his DISSENT, gives his reasons in considerable detail. The difference appears to be, that while Lord Alverstone recognises the logical consequences of assuming the "coast" of the Award to be a reasonable rendering of the "Ocean" of the Treaty ; Mr. Aylesworth, probably influenced by his Canadian leanings, fails to do so. There is a conspicuous want in Lord Alverstone's Judgment on the 5th Question ; while demonstrating the absurdity, even "in ordinary parlance", of calling "any of these channels or inlets between the islands, or between the islands and the mainland 'ocean'; "—to say nothing of, perhaps, only the careless mendacity of doing so—he fails to show any sufficient reason to suppose "that, for the purpose of the Treaty, the waters between these islands and the mainland were included in the word 'ocean', ".

Mr. Aylesworth, in the learned research and painstaking argument of his DISSENT supplies this want, by showing the general conviction of the Profession, that the inlets if not unequivocally ocean, are undoubtedly regarded as being the territorial waters of Russia. He attempts to establish a mainland "coast-line" as the base from which to measure the width of "the strip"; such line would, without question, pass outside the entrances of the inlets ; but a "coast-line" is an artificial line largely based on political considerations, while "ocean" and "coast" are terms that indicate purely natural conditions. The professional mind may imagine the treaty was "dealing with the mainland coast alone, and in that regard speaking and contracting exactly as though no islands existed and as though the shore of the mainland was washed by the open sea" ; but to the ordinary perception these islands are obnoxiously convincing that they have been resigned to Russian domination without remonstrance, and make it impossible to imagine that any part of the inlets could have been reserved to Britain. The same consideration that consigns every island to Russia, should equally allow her at least one day's march on the mainland from any point accessible by coasting vessels. The heads of the inlets are assigned to Russia

not because they are "ocean", but because they are her territorial waters.

The following extracts from the DISSENT, appear equally designed to show the fact of Russian dominance upon the coast, as to show what is Mr. Aylesworth's understanding of the nature of the "coast" itself. The character that is ascribed to the Treaty "coast", really depends very much upon the view that is accepted of the character of the Russian dominance on the coast of North America. The extracts are aranged by the dates attached, in such manner as to exhibit how Russia's "emphatic and indignant" demands, were treated by the British Minister.

The whole negotiations leading to the treaty of 1825 grew out of the Russian Ukase of 1821 prohibiting foreign vessels from approaching the coast of North-West America within 100 miles. The language of the Ukase in which this prohibition is worded contrasts the coasts with the islands, and shows that the coast of the mainland was that from which the 100 miles were to be measured, and M. Poletica, writing to Count Nesselrode (November 3, 1823), so describes it, saying that this edict had extended the maritime jurisdiction of Russia to the distance of 100 miles "*des côtes de la terre ferme.*"

This account differs from the assertion of George Canning, that the Ukase was an "arrogation of exclusive jurisdiction over an unmeasured ocean"; but this may be the view of the transaction held by American politicians. The next extract is some characteristic demands and cajolery addressed to the British Minister, and taken by him into consideration.

. . In his letter to Count Lieven of August 31–September 4, 1824 (Appx. Br. Case, at page 98, last par., and page 99, first par.), Count Nesselrode is emphatic and indignant in his declaration that except as to the *lisière* no concessions whatever in regard to either fishing, hunting or trading would be made to Great Britain. Adhering firmly to this determination as the Russians did, refusing inflexibly to grant to Great Britain any fishing or trading privileges west of mount St. Elias, with what grace could Russia have demanded what she had never before asked—viz., exactly such privileges in British territories south of Portland Canal.

Nor was any such suggestion made. On the contrary, in the same letter Count Nesslerode was careful to point out (Appx. Br. Case, p. 99, last par.) that Russia was leaving free to the trade of future establishments which English companies might form on the North-west Coast "*tout le territorie situé au midi du Portland Channel.*"

It is not the custom of a nation that is convinced of its rights and is in possession of the material power to enforce them, to enter into windy arguments with an aggressor. It was, no doubt, these unsupported pretensions to territorial rights, that constituted the "excuses and procrastinations," that at last provoked from Canning the stern admonition with which he swept them aside, and brought Russia's claims down to the hard-pan of fact that is recognised by the Treaty ; "she must not take it amiss that we resort to some mode of recording in the face of the world our protest against the Ukase of 1821."

After consideration of Count Nesselrode's despatch Mr. George Canning on December 8, 1824, instructed Mr. Stratford Canning to conclude the treaty, accepting in above respects the objections of Russia and saying "We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each others' territories.

This was in its very terms that which alone Russia had signified she would agree to—viz. :—Reciprocity in access and commerce limited in time to ten years, and limited in extent to the waters between Mount St. Elias and Portland Canal. Between these points Britain could not possibly have any waters to give except the heads of Inlets.

The letter of Mr. George Canning, to Mr. Stratford Canning at St. Petersburg, from which the extract that heads the Introduction of this treatise is taken, was written Feb. 16-28, 1825, and it is evident that during the interval before the signing, the treaty, was several times amended in the sense of this admonition, as may be seen by the following extracts.

In the draft convention that accompanied these instructions to Mr. Stratford Canning the Article which is now No. VII. of the treaty was amended by inserting therein the words "the inland sea" before the words "gulphs, havens, and creeks," which alone had appeared in the corresponding Article of the draft convention sent by the same Minister to Sir Charles Bagot five months before. In his Projet submitted to the Russian Plenipotentiaries Mr. Stratford Canning changed the words "the inland sea" to "*toutes les mers intérieures*" as they stand in Article VII. of the treaty as signed.

In Mr. Stratford Canning's Projet as amended by the Russians in the handwriting of M. Matusevich, it is absolutely clear that the Russians understood the ten years' licence of fishing and trading they were giving to the British, and reciprocally receiving from the British, related to the waters of the *lisière* and to no other waters whatever. The wording of the Article

is "*Toutes les mers intérieures, les golphes, havres et criques dans les parties de la côte mentionnées dans l'Article III.*," while in Article III. the only coast mentioned, and the only parts of the coast included, are the "coast" and the parts of it—between latitude 54° 40′ and longitude 141°.

In the treaty as finally signed the words "*dans les parties de la côte*" become simply "*sur la côte*," and the possessions of the Powers are, in Article III., described as "on the coast of the Continent" instead of "on the Continent," but the true meaning and intention of the parties has been in no way altered thereby; and from the time of Count Nesselrode's refusal to treat as to reciprocal trading rights elsewhere than in the *lisière* and Mr. Canning's acquiescence in such refusal, no further negotiations whatever on that subject took place.

We may continue Lord Alverstone's Answer, from page 45:

Before leaving the Treaty, it is, in my opinion, necessary to notice the very important argument put forward by Great Britain, founded upon Article VII. It was contended by Great Britain that the words "gulphs, havens, and creeks on the coast mentioned in Article III.," referred only to the gulphs, havens, and creeks on the *lisière* or strip bounded as described in that Article. If Great Britain could have made good that contention it would, in my opinion, have afforded the strongest argument that the Treaty contemplated that the *lisière* or strip might cross bays, inlets and arms of the sea, but in my opinion the contention cannot be successfully sustained.

The coast mentioned in Article III. is, in my opinion, the coast of the continent, and the coast referred to in the second paragraph of Article IV. is also the coast of the continent The *lisière*, ascertained by drawing the boundary in accordance with the directions in Article III., is a strip upon the coast, and would not, I think, be naturally described by the words "the coast mentioned in Article III." My view is that the provisions of Article VII. are perfectly general, and gave mutual rights for a period of ten years to Russia and Great Britain respectively, in respect of their possessions upon the north-west coast of America.

Turning now from the consideration of the language of the Treaty alone, what light is thrown upon this question by reference to the negotiations?

After most careful examination, I have been unable to find any passage which supports the view that Great Britain was directly or indirectly putting forward a claim to the shores or ports at the head of the inlets. This is not remarkable, inasmuch as no one at the time had any idea that they would become of any importance.

These paragraphs, appear in many respects, the most interesting part of this Judgment; Lord Alverstone recognises that Article VII., as it exists in the Treaty, is quite inconsistent with

the view he has taken of the *lisière* being a continuous strip, passing round the heads of inlets so as to exclude British subjects from tide-water. The Article is as follows :

VII. It is also understood that for the space of ten years from the present Convention the vessels of the two powers, or of their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, gulphs, havens and creeks on the coast mentioned in Article III. for the purpose of fishing and trading with the natives.

It will be observed, all these inland seas, gulphs, havens and creeks, are specifically stated to be "on the coast mentioned in Article III." While Lord Alverstone admits that if this statement "could have been made good," he would have had to deny the right of the United States to an exclusive possession of these inlets, he fails to give any substantial reason for his opinion, "the contention cannot be successfully maintained". It is impossible, from the very nature of documentary, or perhaps of any other kind of evidence whatever, to get proof of anything that should be more incontestable than what is given by the existence of the Article itself. Thoroughly attested as the result of negotiation that extended over several months, its terms or their implications, should be beyond the possibility of a suspicion that they do not express the knowledge and intentions of the parties to the Treaty. In view of the importance to Canada of this particular result of the Award, it is to be regretted that Lord Alverstone did not observe the necessity of a more cogent reason for denying the practical truth and validity of Article VII., than, that he had been unable to find any evidence that Britain had, "directly or indirectly" put forward any claim to the shores or ports at the heads of the inlets. A failure that he explains by a suggestion, that at the time, these channels of trade did not appear to be worth claiming ! This may be judicious but it is not judicial, because it might have the appearance of having been advanced to oppose the discovery of a simpler motive that might appear more reasonable. In such negotiations it is not custom-

ary for either party to "claim" possessions that are undisputed and indisputable. The boundary line contemplated by both parties, placed British rights in these waters beyond contention.

Lord Alverstone's Judgment as well as Mr. Aylesworth's DISSENT, disclose a circumstance that goes far towards vitiating the conclusions they have arrived at ; Article III. is mentioned frequently by both, but neither appears to have grasped its real meaning, while the last has misquoted its terms in a manner that exposes the nature of the misapprehension. Mr. Aylesworth, in his argument says : "The preamble speaks of the possessions of the two Powers 'on the North-West coast of America.'" ; and again : "Article III. defines a line of boundary between the possessions of the two Powers 'upon the coast of the Continent.'" This is right as far as it goes, and in the sense and with the purpose for which it is used ; but, when citing Article VII. to support the right of Britain to the head-waters of the Inlets, he goes on to say :"The waters are those '*sur la côte mentionée dans l'Article III.*', but, Article III. speaks first of the possessions of the High Contracting Parties '*sur la côte du Continent*' and afterwards of the boundary of the *lisière* on the mountains '*situées paralèlement á la côte.*'" ; in view of its bearing on the attainment by the United States of "an unjustifiable arrogation of exclusive jurisdiction over an unmeasured extent" of territory, he is making a statement that is not true ; and which if made by an Advocate ostensibly in the interest of the Republic, would justify an assertion that he knew the statement was false both in substance and intention.

In the first place, the Article does not, in any form, repeat the general statement of the location of the possessions, that was appropriate to and done with, in the preamble. The subject matter of Article III., is, as stated in the opening words ; "The line of demarcation between the possessions of the High Contracting Parties," that was to be drawn "upon the coast of the continent, and (*of*) the islands of North America to the north-west."

It is here explicitly stated, that the boundary line is to be

drawn not upon the coast of the continent alone, but upon the coast of the islands also, that are here considered as "the border of the continent." The fringe, or strip of "coast" that was here assigned to Russia, was a part, not the whole of the *lisière*, as is clearly indicated in Article V., where it is contrasted with the coast of the continent ; the words are that British subjects shall not form any establishments "either upon the coast, *or upon the border of the continent comprised within the limits of the Russian possessions.*"

It cannot be supposed for a moment that any of the parties who, on one side or the other, have constantly referred to Article III., and in quoting it have stopped short at the first comma, have been unconscious of the words that follow ; they must have had some motive of restraint. The impression given by both the papers under discussion is, that the writers are absolutely sincere in their convictions ; had they been otherwise some attempt would have been made to conceal the often very inadequate, and sometimes contradictory nature of the evidence on which they are entertained. But, like the general public, their minds have been so dominated by the well advertised and exploited interests of the other side, that they have been unable to find anything either in the Treaty or the correspondence, unless they expected to find it there.

On the part of the United States a reasonable and sufficient motive is not far to seek. In a pamphlet, (1903) Mr. T. Hodgins, K.C., says : "The following commentary in a Despatch, written by Mr. Secretary Blaine to the British Ambassador in 1890, is a diplomatic admission, on behalf of the United States, of 'the spirit, intent and meaning' of this Treaty :—(that is also quite inconsistent with the claim of ambiguity in these clauses.)

It will be observed that Article III. expressly delimits the boundary between British America and the Russian possessions. The delimitation is in minute detail from the 54° 40′ to the northern terminus of the coast. The evident design of Article IV. was to make certain and definite the boundary line along the strip of coast, should there be any doubt as to that line as laid down in Article III. It provided that the boundary line, following the wind-

ings of the coast, should never be more than ten marine leagues therefrom.

'And his commentary on Article VI. supports the British claim :—'

Nothing is clearer than the reason for this. A strip of land, at no point wider than ten marine leagues running along the Pacific Ocean, from 54° 40′ to 60°, was assigned to Russia by the third article. Directly to the east of this strip of land, or as it might be said, behind it, lay the British possessions. To shut out the inhabitants of the British possessions from the sea by this strip of land, would have been not only unreasonable, but intolerable, to Great Britain. Russia promptly conceded the privilege, and gave to Great Britain the right of navigating all rivers crossing that strip of land from 54° 40′ to the point of intersection with the 141st degree of longitude. Without this concession the Treaty could not have been made. It is the same strip of land which the United States acquired in the purchase of Alaska ; the same strip of land which gave to British America, lying behind it, a free access to the Ocean.

And the following, by Mr. Ex-Secretary Foster :—

The purpose for which the strip was established would be defeated if it was to be broken in any part of its course by inlets, or arms of the sea, extending into British territory. With the strip of territory so established, all the interior waters of the Ocean, above its southern limit, became Russian, and were to be inaccessable to British ships and traders, except by express license.

The almost gushing candour with which American diplomacy proclaims the existence of rights that cannot be denied, but are inconsistent with their own pretensions, obtains an easy and unsuspicious credulity that remains unconscious of the inverted distortion to which these rights are made subject. Who would dream of suspecting such generous opponents of the vulgar device of lying ; an offence of which only children and such feeble minded persons are guilty, as may be safely jumped on. Practical patriotism, is a virtue that ranks high in the estimation of the United States, and the citizen who allows any other sentiment to stand in the way of obtaining a political advantage, had better avoid the field of political favour. To gain Alaska, diplomacy would deprive the species of TRUTH itself. The definitions of such words as "continent," "coast," "ocean," &c, in Webster's Dictionary, are not beyond the suspicion of having been

affected by consideration of possible results to remote interests. For instance, the word "coast" is traced to the L. *costa*, a rib, and its relation to the Ocean is ignored. Its derivation should probably be looked for under, Constancy: *con*, and *sto*, to stand against. Unalterable continuance.

The Americans claim an ambiguity in the meaning of the word "coast" as used in the Treaty, their object being to present the Russian correspondence as evidence in support of their claims to a greater extension of rights than the Treaty grants. These claims were so large, and their concessions to Britain of the right to navigate her own waters, so grandiose in their generosity, as befitted the owners of all they could obtain; that it was cruel of Canning to threaten them, in diplomatic terms, with the visit of a frigate or two, to drive their flag off the coast, unless they quickly made up their minds to sign an equitable treaty. Canning has been dead many years now, and American claims have reopened the old pretences to a more credulous generation.

The object of Article IV. is, not only as stated by Mr. Secretary Blaine, and as accepted by Lord Alverstone, to apply in case mountains were not found within ten marine leagues of the "coast"; but with greater certainly to define and identify the "coast" itself, with the Ocean to which it belonged. The practical recognition that Article III., explicitly states the boundary line between the possessions of Russia and Great Britain, is to be "on the coast of the continent, and the islands of North America to the north-west," should effectually dispose of the assertion of ambiguity in the meaning of the word coast. The "coast of the continent," in the first paragraph of Article III., does not as Lord Alverstone understands it, refer in vague and general terms "to the north-west coast of America." It refers to the particular part of the coast situate between the 141st degree of longitude, and the islands and arms of the sea that continue the limit of the Ocean, as far as the 54° 40′ of north latitude.

The apparent ambiguity in the phrase "parallel to the coast" as compared with that of "ten marine leagues from the Ocean,"

which seems to indicate a practical difference between the two, results from the following conditions. The distance of mountains from the Ocean, must of necessity be measured from the margin of the ocean, that is, the coast ; but to say they were parallel with the ocean, would imply a consideration of the whole body of water contained in the ocean, by which to determine the location and direction of its major axis, to which the assumed parallelism must be referred. This major axis might be at right angles to the general direction of that particular part of the coast on which the mountains indicated might exist. So that, if we may say that mountains are situated parallel to the coast, we may with equal accuracy say they are distant ten leagues from the ocean.

We may observe from the foregoing observations of Mr. Secretary Blaine, how the "strip of coast" conceded to Russia became the "strip of land," claimed by the United States. There is a vast difference between the two. A strip of coast, especially upon a frontage so deeply indented as is this portion of the Pacific coast, implies a fragmentary condition of the land included. A "strip of coast," is by no means equivalent to a "water frontage," for a *coast* has certain physical features by which it is sharply distinguished from other portions.

As before stated, it is the rocky border of the land, from which the ceasless action of the wind and wave have carried every fragment they could rend away. Where the coast is formed by the transverse section of mountainous ridges, divided by deep valleys, the coast is usually formed by precipitous capes with intervening bays or inlets of varying width and depth. Within the comparatively shallow waters of these, in positions from which the rush of waves or ebbing tides is unable to dislodge it, the detritus of the coast accumulates ; here they form a shelving shore of the lighter particles, which is usually only completely covered at high-water ; while the heavier stones of various sizes, that the wash of the receding wave is unable to carry back, are usually piled in an upwardly sloping curve of peculiar contours, forming

an effective protection against erosive action, shaped by the waves themselves ; this accumulation is called a *beach.* Where this stranded matter is in sufficient volume to rest against the rocky promentories, the *coast* ends and the *shore* begins ; it would be from these locations the widths of any "strip of coast" would be measured ; not from the bottoms of the bays, or from the extremities of the capes.

There is a suggestion in the 6th Question, that under certain conditions, the Tribunal might be asked to define "the line separating the waters of the ocean from the territorial waters of Russia." Probably, the usefulness of this question was suggested by what appears a peculiarity of the Treaty, which, far from granting territorial waters, reserves even the rivers and streams that may cross the strip of coast described in Article III., how much more should inlets and arms of the sea be reserved to Great Britain, *for ever.* The question by taking it for granted, fosters a conviction that such Russian waters do exist ; but it would be doing injustice to American astuteness to suppose that there is not shown in asking it, a perfect confidence that their opponents would fail to observe the very serious consequences that might result, if this line, separating the territorial waters—either Russian or British—from the ocean, should be defined ; for this is the true datum from which the boundary should be established. For purposes of survey, the base line in a bay might be the straight line joining the extremities of the beach, but in the case of deeper inlets containing a larger body of water, the ebb of which causes a tidal rush that prevents the formation of a beach across the entrance, the inward extension of the coast is limited by the consideration that, from one point at least, the *coast* must be exposed to the full force of the waves. That means an observer standing on this part of the coast, on a level with the water, must command a clear view of the horizon, subtending an angle of at least 90 degrees from the point where he stands.

The same rule will apply to the line dividing the waters of the Ocean from those of a strait or inlet ; the dividing line is one

from all parts of which the observer can command a clear view through the entrance, of an horizon of at least 90 degrees. Such a line would describe a curve with the concave side towards the ocean ; a curve that would be one of "the windings of the coast," to which in the absence of nearer mountain summits the line of boundary would be drawn parallel. Some of the reasons for this angular extension of the horizon are derived from considerations of practical seamanship, that before the days of steam-power were more impressed upon sailing-masters than now ; outside this line nothing but a head wind would prevent him from getting to sea.

There is evidence, both in the reported proceedings of the Tribunal, as well as in Lord Alverstone's written Judgment, that the undisputed plausibility of the United States claims rather than the proof of their validity by the terms of the Treaty, decided the nature of his answers. We find that at the conclusion of the address by the Hon. J. M. Dickinson : "The LORD CHIEF JUSTICE, on behalf of all the members of the Tribunal, desired to thank Mr. Dickinson for his brilliant and powerful argument. It had been his privilege to listen on other great occasions to leaders of the American Bar, and he could assure Mr. Dickinson that his argument would not suffer by comparison with those of other eminent counsel of the United States which he had had the pleasure of hearing in other great arbitrations between the two countries.

While appreciating a kindly and courteous act of recognition extended to a stranger, it is not well to overlook the fact that the object of the effort was not to entertain the members of the Tribunal, but to obtain a favorable judgment on some points in dispute, by methods, however they may be in consonance with the practice of *Advocacy*, do not commend themselves to the understanding of logicians whose object is the discovery of truth, apart from any consideration of the result on the conflicting interests of individuals.

To the writer, it appears that apart from the question of the heads of the inlets, the disputants on either side are perfectly satisfied with the general interpretation that has been placed on the terms of the Treaty ; the Canadians—if we may take Sir Wilfrid Laurier's opinion, expressed as that of lawyers if not of states-

men—because they believe that prior occupation entitled Russia to more than the United States has claimed ; and the latter, because they were certain they would obtain far more than either party to the Treaty had expected or intended.

The United States, from the inception of the Ukase of 1821, appear to have so developed their interests upon the north-west coast of the continent, that Canadians have relieved them of the onus and risk of duplicating the Maine Boundary *expansion* on a more gigantic scale. It is King's Counsel, who before the Tribunal, to the damage of their own contentions regarding the heads of the inlets, go out of their way to disclaim any British rights upon the islands ; and proving with elaborate care that the Ocean of the Treaty—like a crop-headed Samson in the arms of the Philistine—lapps languidly amongst the channels of the "inland sea," that by the terms of delimitation is exclusively British. One even states :—"The fallacy of the argument that there was no ocean inside the islands rested on the omission to consider the position of these waters before the treaty, when Russia had not the undisputed ownership of the mainland as well as of the islands."——

Can this learned profession imagine it is they, who, in any sense set a limit to the Ocean, or that it is bounded by the treaties of nations that in comparison have but an ephemeral and insecure existence along its margin ? Such assertions—they cannot be called arguments—made by United States counsel, if they did not defeat their object would certainly have provoked a strenuous and perhaps successful opposition ; used by Canadians the result was unavoidable.

From *The Times* reports of the addresses of U. S. counsel, it is not impossible to glean some arguments that appear to favour British rights rather than the opposing claims in support of which they are advanced. Mr. Hannis Taylor, suggests that Britain "sought to regard the treaty as the starting point for a fresh controversy, and to reduce it to a mere nullity." ("You'r another !" is often a very effective argument—failing a better.) "Portland Channel, as claimed by the United States, was broad and navigable, that of Great Britain was tortuous and useless. Great

Britain relied on Vancouver's narrative. There was no affirmative evidence that the negotiators had it before them, though it was possible." (We, British subjects, by a complacency that has lost us all sense of the impudence that would have made it intolerable, and almost incredible except as between the United States and Great Britain ; have listened all our lives to a suggestion that, after sending Vancouver to make a survey of this coast,—as thorough as was either necessary, or practical without the use of steam-power to explore the intricate channels, rendered dangerous by the strength of the tides—British statesmen had not sense enough to use the information in the negotiations that followed.) " He then criticized the evidence in detail, relying in particular on the argument that Sir Charles Bagot, in contradiction to Vancouver's narrative, supposed that Portland Channel might lead to a large navigable river."

It appears to be a marked characteristic of the mental attitude of the Canadian representatives, to have an absolute reliance upon the integrity of the Russian and American claims, and none whatever upon the business ability, or perhaps even the honesty of the British. It is quite likely Sir Charles Bagot and others had sufficient knowledge of the business they were conducting, while the official staff would be permanent enough to insure continuity of information ; unless we must credit British officials with almost asinine stupidity, Vancouver's survey made it impossible they should have any illusions respecting the insignificant back-water the Tribunal has dignified with the name of Portland. That Bagot should have thought the *Channel* of the treaty might lead to a large navigable river, far from proving the British ignorant of the physical features of the coast they were dealing with, unites with other evidence, to prove it impossible that the *Channel* Count Nesselrode described as having " *l' origine dans les terres*," and which all parties to the Treaty were satisfied touched the coast of the continent between the 55° and 56° of north latitude ; could have been the *Inlet*, that M. Matusevich described as "*passe se termine dans l' intérieure de la terre ferme*," and which,

as appears from a remark in Mr. Dickinson's address, he would have successfully substituted in the Treaty, had not the fraud been detected and frustrated by the practiced vigilance of British Ministers.

Mr. Dickinson was trying to prove, that as Canning considered the word *côte* appropriate to the head of Observatory Inlet, it was equally so to the head of the Lynn Canal. Mr. Aylesworth, on the contrary, uses the incident of the Natusevich alteration to show, that the Russian, who from his profession might be supposed to have better knowledge, thought the word inapplicable. Naturally, it was not the Canadian who instanced the determination of Canning, that his own and Count Nesselrode's description should be retained. Mr. Aylesworth, in using this argument has failed to observe, that the proposed change is not one of phraseology only, the difference in the descriptions he has given, is so radical it is impossible they should apply to the same thing. The name of a lost dog may be an advantage, in giving the canine an opportunity of proving his identity by answering to it ; but in this instance, it is not the dog but the name that has gone astray, and there appears no good reason why the owner should be compelled to adopt a cur, because somebody says it answers to the name the dog should be called by.

Count Nesselrode's description of the *Channel*, as embodied in Article III. by Canning, points explicitly to the *Strait* that divides Prince of Wales Island from the *terre ferme*, at the point of latitude indicated, and the identification is so complete that failure to recognise it could be justified only by positive proof that no channel existed there.

The success of the United States claim, has been due in a great measure to the uncertainties they have managed to introduce as to the meaning of the word *coast*, as used in the treaty, or *côte* as they prefer to call it. No method by which the minds of the unwary may be confused appears to come amiss ; one of the counsel, in reply to some observation by Lord Alverstone, managed to "get off" the phrase : "yes, the general windings of

the coast, or the windings of the general coast." This phrase appears to have impressed Lord Alverstone, for he uses it as if it held some motive that might at a critical point affect the issue of his argument (see p. 45, line 2).

When it is accepted as an expression of honest thought, the phrase presents peculiar difficulties because it really has no meaning ; there are general characteristics, but the attempt to merge them into the composite unity that the concept of a "general coast" would appear to demand, is not possible, least of all in this particular instance, where the details that are the essence of individuality, must be so strongly marked. The meaning of this phrase appears so elusive to the mind, as to create a feeling of astonished reverence for the subtlety of intellect that can penetrate such abstractions ; while but few who have a moderately good opinion of their own mental resources, would care to acknowledge failure and ask for help. The result upon other involved issues, is very apt to be a surrender of judgment to the assumed superiority of understanding in the propounders of doubtful propositions. This appears in the paragraph beginning : "I see some broad objections to this view." These objections are, that the geographical position was unknown to the negotiators, and that they had come to no "common understanding as to what the general line of the coast was" !

Lord Alverstone appears not to have accepted the Canadian view, that the treaty was "dealing with mainland coast alone and in that regard speaking and contracting exactly as though no islands existed and as though the shore of the mainland was washed by the open sea" ; but it was "an agreement respecting an archipelago of islands off the coast, and some strip of land upon the coast itself."

Article III. appears to meet many of these objections. It divides the boundary line into two portions ; if we take these in the reverse order in which the treaty deals with them, we may avoid some of the "ambiguities" by which the subject has been beset. We shall then find that from the Frozen Ocean to a point

within a few leagues of the Pacific, the boundary follows a meridian of longitude, this part of the line is said to be "on the continent of America to the north-west." There has never been any uncertainty about locating this part, except as to the place of the meridian specified. The next stage of the boundary line, is said to be "upon the coast of the continent, and the islands of North America to the north-west"; and is to "follow the summits of the mountains situated parallel to the coast," unless, as is explained in Article IV., these summits "shall prove to be of a distance of more than ten marine leagues from the Ocean."

The correspondence preceding the Treaty appears to show that the mountains nearest the sea were intended, and it is probable these, rather than a specified distance from the ocean, were selected as offering a boundary that could be discovered at any time without the aid of instruments; because it may be assumed that any summit from which the ocean is not visible, on a clear day, whether this might be due to distance or to higher ground intervening, is outside the limit of the strip that was assigned to Russia. In the absence of summits within the limit, the line would be from summit to summit of those last discovered, or by the intersection of two such lines projected in either direction, as long as they are within the distance measured from the coast basis as previously described.

This part of the line commences with its intersection by the 141st meridian, and after passing the islands and the straits that separate them, reaches its southern limit at the point of the continent touched by the 56th degree of north latitude, or as modified by Article IV., by contact with Prince of Wales Island.

Between the intersection of the meridian and the first strait that separates the islands, the *coast* is upon the mainland, but beyond this the coast lies upon the islands by which the continent is bordered. There is nothing in the relation of these islands to the mainland, to justify Lord Alverstone in speaking of them, as he does, as being off the coast; he would probably say the Isle of Wight is *on* the south coast of England. No island

can, without conveying a false impression, be spoken of as *off* the coast, that is not separated from it by a channel however wide it may be, that is not also straight enough to afford a clear view from end to end ; otherwise, the island being indented with the land is itself a part of the coast. These islands especially, are so deeply indented with the mainland and with each other, that it must be impossible for a navigator approaching from any direction, to detect any indication of the existence of this close-nested archipelago. Only by experiance of the violence of the tides straining through the narrow "passes" of the mountain promontories, would the wary mariner receive his first intimation of the vast area of the inland sea, waiting to be filled or emptied at each recurring interval. The last place on earth where any person less imaginative than a closet student, would expect to find a second *coast !* hidden away behind the first.

Though having a good memory for, and a keen interest in such details, the writer's idea of these islands was that they were of so moderate elevation, as to place little obstruction in a view from the sea of higher ranges beyond. But almost simultaneously with the Award, came the publication in Canadian newspapers, of a description of this region that might fill the reader with astonishment, and perhaps, establish a conviction that it was not without intention that such information had been withheld, till the rendering of the Award had, apparently, placed the United States' tenure beyond dispute. Mr. Aylesworth, with an authority that is almost absolute, and of which the writer is glad to avail himself—confirms this discription in an argument that is intended to vindicate British rights to the heads of the Inlets, but which, being based on local facts instead of legal inferences, may have a wider application than its author intended. As follows :–

"With reference to the seventh question, as the majority of the Tribunal has decided that the mountains which shall form the eastern boundary of the *lisière* are to be sought inland at some place behind the head waters of every inlet, it is idle for me to express my views at any length.

Over and over again in the negotiations this *lisière de côte* which Russia was asking and England giving was spoken of by the Russians as a mere *point*

d'appui, as extending inland only *une tres petite distance*, as being only *une étroite lisière sur la côte meme*, or *une simple lisière du continent.*

Consistently with this understanding of the width of the *lisière*, the mountains which were to form the inner boundary are always spoken of as being very near to the sea. The only knowledge of these mountains the negotiators of the treaty had was derived from Vancouver's travels, and Vancouver had seen the mountains only from his ships as these explored the coast.

The mountains nearest the sea for the whole length of the *lisiere* are in fact, lofty peaks 3,000ft. or more in height, often rising to double or treble that elevation, and sometimes exceeding 15,000ft. It is manifest that from the water, and close to shore, as Vancouver's course lay, mountains such as these would completely shut out any view of the country further inland. Except for possibly an occasional glimpse between seaward peaks of another mountain further away, Vancouver could have no knowledge what the nature of the country was behind the mountains he saw, and the language used by those who negotiated the treaty of 1825 shows that the extent of their knowledge was in this regard equally limited.

Under such circumstances, it is difficult for me to understand how the treaty when it speaks of *montagnes situées parallelement á la côte*, can refer to mountains miles inland, invisible from the sea, which lie far behind the seaward mountains and which it is an admitted impossibilty that Vancouver ever saw or the negotiators of the treaty ever knew the existence of.

The words of the treaty, *montagnes situées parallelement á la côte*, and the idea of parallelism thereby conveyed imply the line of mountains next adjacent to the coast. Apart from the circumstance that no kind of reason can be assigned for skipping over one or two, or it may be half a dozen, lines of mountains between the coast and the boundary, the very fact that the treaty couples the boundary line directly with the coast line argues in favour of the first line of mountains being meant. I think any one who spoke of two lines as parallel one to the other would scarcely have in contemplation a third line parallel to each, but situate between the two.

In the present case we have, moreover, the circumstance that throughout the negotiations preceding the treaty these mountains are invariably spoken of as near the coast." (Various extracts in support follow.)

Mr. Aylesworth in his vivid topographic sketch, has failed to appreciate the full extent of the local information that might be gained by coasting voyages. In addition to the indications of the large area of the inland sea, given by the violence of the tidal currents, such a vista as an inspection of the map suggests must be opened out by Chatham Strait, even if it did not by a

promise of unimpeded navigation, tempt the mariner to enter it with his ship, he would at least discover a depression in the land extending into the blue distance, by which the range of mountains he had observed to extend close to and in a direction almost parallel to the coast, from the 141st degree of longitude, nearly to the 56° parallel of latitude, are separated from the confusion of transverse ridges and depressions that fill the spaces between the more mountainous masses of the continent.

If the negotiators derived all their knowledge of these mountains from Vancouver's travels, the dogma of the validity of the claims, derived from the idea that "from time immemorial Dyea was in possession of the Russians," must be either the rankest fabrication or an irrational delusion ; and the object of the treaty must have been as stated by Canning, simply a means by which, with as little humiliation as possible, Russia might renounce the claims that had been made to sovereignty on the continent of North America by the Ukase of 1821.

The form of Mr Aylesworth's reasoning is perfectly logical, and when he says :–"This language makes it absolutely certain that the Russians understood their boundary to be the mountains nearest the sea" ; one would imagine that he would arrive at the inevitable conclusion that the coast of the treaty was the margin of the ocean, and the utmost limit of the continent.

Mr. Hannis Taylor advanced a very ingenious argument :—

"The meaning of 'coast' was purely a question of international law. There were two kinds of coast—the physical coast line, which existed for the purpose of boundary, and the political, which existed for the purpose of jurisdiction. The British argument admitted that the political coast line of South-Eastern Alaska ran outside the islands. Therefore, inside the islands we had only the physical coast line ; there could not be a political coast line inside the islands as well as outside. (*Why not ?*) The coast within the meaning of the treaty must extend round the heads of the inlets."

But there is no occasion to appeal to international law, to obtain a decision of what was intended by the word "coast" as used in the Treaty. Article III. says explicitly, it is "the coast of the continent, and the islands." It is evident—even by the

extracts from the correspondence used for other purposes—that the negotiators understood the different meanings of the terms "coast of the continent" and "coast of the mainland" (*terre-ferme*) and used them as definite technical expressions. Immediately to the east of longitude 141°, where there are no islands bordering the coast, the coast of the continent is upon the mainland, and might be referred to by either term. But this does not sanction such an idea as appears to be expressed by Lord Alverstone in the words "an archipelago of islands off the coast, and some strip of land upon the coast itself," because this implies that the term "coast of the continent" means explicitly the coast of the mainland, to the exclusion of any islands that, technically speaking, are part of the continent. It must have been with the intention of making a mistake of this kind impossible, that the opening sentence of Article III. says, the line of demarcation shall be drawn upon "the coast of the continent, *and the islands*". Not that the terms are placed in opposition, but to prevent the possibility of the exclusion of the islands by a well known misuse of the term continent.

Mr. Geo. Canning had no such confusion in his mind when on Dec. 8, 1824, he sent the draft of the treaty to Mr. Stratford Canning, who in translating "coast of the continent," as related to Portland Channel, into French, changed the term into *la côte de terre ferme* : that the correction was not in any form embodied in the treaty, may be explained by changes that were made in the details of the boundary. From a remark made by Mr. Dickinson, it appears the south-eastern boundary first proposed by Sir Chas. Bagot, was to run up Chatham Strait to the head of Lynn Canal.

The following are from the Attorney General's address :—

On October 21, 1823, Baron Tuyll wrote to Count Nesselrode :—"Supposing it to be impossible to succeed in extending the frontiers of Russia much further towards the south, it seems that it would be indispensable to have them fixed at least at the 55th degree of north latitude, or better still at the southern point of the Archipelago of the Prince of Wales and the Observatory Inlet, which are situated almost under that parallel.". . Sir Charles Bagot in March, 1824, writing from St Petersburg, expressed his regret that

he had been unable to come to terms with the Russian Government, and enclosed a counter draft by Russian plenipotentiaries, in which 55 degrees was said to be acceptable if two points of land on Prince of Wales Island were also granted. Russia desired the mainland from the Portland Canal as far as the point of intersection of the 139th degree of longitude with the 60th of latitude. As compensation Russia was willing to open to the subjects of King George the free navigation of all the rivers which empty into the ocean within the said strip of land. But Sir C. Bagot pointed out that this proposal would deprive his Britannic Majesty of the sovereignty over those inlets and small bays which are to be found between 56° and 54° 45′ of latitude, many of which (as there is every reason to believe) communicate directly with the establishments of the Company of Hudson's Bay, and would consequently be of vital importance to its trade. It was to be observed that the reasons which led Russia to desire this *lisière* were purely commercial, and Count Nesselrode, writing to Count Lieven, pointed out in April, 1824, that if Prince of Wales Island remained Russian it would be useful to Russia; otherwise the Russian establishment would be at the mercy of Great Britain. But on May 26, 1824, Mr. Pilly, of the Hudson's Bay Company, pointed out to our Foreign Office that the mountains which Russia suggested as the boundary, and which were described as being "*une très petite distance*," might be far from the coast, and suggested that the distance ought to be limited to ten leagues. A day or two later Mr. Canning, writing to Count Lieven, expressed the hope that the restrictions on the free navigation of the North Pacific in the Ukase would be wholly withdrawn and that terms might be reached for the free use by us of all rivers entering the sea within the Russian frontier.

. . The counter draft of the Russian plenipotentiaries, dated Aug. 12, 1824, was an enclosure from Sir C. Bagot to Geo. Canning. By Art. I. it was suggested that the line of demarcation should start from the two points which formed the southernmost extremity of Prince of Wales Island, which entirely belonged to Russia and was in 54° 30′ N. latitude and between 131° and 133° W. longitude, the line of frontier ascending northwards along Portland Channel until the pass came to an end in the interior of the mainland at the 56th degree of N. latitude. (*some proposals for mutual trading, as in the existing treaty follow*) Next, that the subjects of either Power should not, except under stress of weather, land at the establishments of the other without permission; further, that liberty of commerce should not include trade in spirituous liquors or arms, which were in no case ever to be sold to the natives; that the subjects of his Britannic Majesty were to have free navigation in Russian waters, and that the port of Sitka or Novo Archangelsk should be open to foreign trade for a renewable term of ten years. On these points Sir Charles Bagot commented, observing that he was distinctly informed that the Russian Government insisted upon them, and that unless he received

further instructions negotiations must cease. The other differences were of minor importance. Sir C. Bagot further said that the maritime jurisdiction claimed by Russia was still unretracted, and that the British Government would probably be of opinion that some arrangement must still be entered into. This marked the fourth stage of the negotiations. There is a letter from Count Nesselrode to Count Lieven, in which three points were mentioned on which it was impossible for Russia to give way. These were— *(1)* Liberty to British subjects to hunt, to fish, and to trade with the natives of the country perpetually on the whole of that part of the coast which constitutes the subject of the discussion and which extends from 59° N. latitude to 54° 40′ ; *(2)* Liberty to English subjects to hunt, to fish and to trade with the natives of the country for ten years on another part of our coasts and islands, from 59° N. latitude to Behring Strait ; *(3)* The permanent opening of the port of Sitka or Novo Archangelsk." Count Nesselrode then stated that Russia had always been willing to grant freedom to British subjects of using all the rivers crossing strips of coast of Russian territory and all the seas, straits, and bays belonging to Russia, and also to surrender the exclusive claims set up in the Ukase of 1821 with respect to the navigation and jurisdiction of the North Pacific Ocean. This freedom Russia, it was said, had always shown herself willing to guarantee.

The last stage of the negotiations opened in November, 1824. The treaty between Russia and the United States was signed Dec. 8, 1824 In a despatch from Geo. Canning to Stratford Canning it was stated that England could not recognize free navigation of the Pacific as an indulgence from any Power, and that as a plain and substantive stipulation this must be clearly stated in the convention, as it already had been stated in the convention between Russia and the United States. England could not accept as a boon what the United States had received as a right. . . On Feb. 1, 1825, came the *contre projet* submitted by Stratford Canning, in Art. 3 of which the line began from the southern point of Prince of Wales Island, and ascended to the north (Prince of Wales Island belonging entirely to Russia) along Portland Channel "until it touches the coast of the mainland at the 56th degree of north latitude.". This draft was altered by M. Matusevich ; the difference appeared to be only verbal, but the new Art. 4, said explicitly :— " It is understood that the island called Prince of Wales shall belong entirely to Russia."

This extract combined with Mr. Dickinson's remark, appears to furnish a fair synopsis of the processes by which the boundary line of the Treaty has been arrived at. The Canadian case appears to have avoided any reference to Sir Chas. Bagot's first proposal to make Chatham Strait and the Lynn Canal the boundary. This is noteworthy, because such a proposal demonstrates the

conviction of British Ministers that Russia had no reasonable claim to anything to the south or east of this natural division. It is evidence also that Britain intended to retain free access to the head waters of the Lynn Canal. This boundary appears not to have been acceptable to Russia, though it fully recognizes the value of her claim in giving a typically Russian name to an Indian village. On the theory that Russia and the United States were already conspiring to exclude Great Britain from the Pacific, it would be still less welcomed by the second Power as leaving no possibility of an ambiguous misunderstanding. But if Russia could obtain possession of the coast as far south as 54° 40′ and the United States as far north as 55°, this deliberate purpose of exclusion would be accomplished.

For trade or fishing purposes only was Canning willing to negotiate with Russia about limits, as long as the results did not prejudice the sovereign rights of Britain on the continent ; nor was it necessary that Russia should explicitly disclaim the pretensions that had been made by the Ukase of 1821, it was quite sufficient then, in the estimation of British Ministers, that in a treaty Russia, should, if only by implication, recognise British territorial sovereignty.

Baron Tuyll's correspondence with Count Nesselrode, makes it clear that Russia *desired* to obtain possession of the mainland as far south as Observatory Inlet, and as compensation was willing to allow certain liberties of navigation to British subjects, within the coveted territory. These were *demands* from which we are assured it was impossible Russia should give way. The studied moderation of expression in Canning's correspondence when compared with the arrogance of the Russian *demands* and *concessions*, has not been appreciated by lawyers at its right value. We "hope that restrictions on the navigation of the north Pacific will be wholly withdrawn, and that terms might be reached for the free use by us of all rivers entering the sea within the Russian frontier," sounds very much like asking a favour. But it is asked by a minister who has already formulated the terms on

which only he will allow Russia to occupy territory she speaks of so complaisantly as her own ; and whose means for enforcing them are not limited to an uncertain and dilatory legal process. If we examine these conditions, we find they are based upon what has long been a fundamental principle of British policy : " Liberty to hunt, to fish, and to trade with the natives of the country perpetually, on the whole of that part which constitutes the subject of discusion." These conditions are not limited in their extension by terms of latitude and longitude, but apply to all places and to every person who is willing to live under the conditions of British law. Canning said very little about sovereign rights, but, except in lacking the element of publicity, in no other way could he have better addressed himself to the moral sense of his countrymen, and to their determination to extend and maintain such a sovereingnty of the people to its utmost limits. *Land-grabbing* like this should be the glory of the British race, out of which none should allow it to be shamed, by either Russian or Yankee who want the ground on which to extend the area of their own peculiar brand of political despotism.

As the Ukase of 1821 was regarded as an act of aggression by the United States as well as by Britain, it might be expected that Russia would formulate demands in excess of what would be ultimately arrived at, but these appear to have increased as Britain was discovered to be willing to negotiate. For trading purposes Russia wanted a footing on the coast, the Lynn Canal boundary being much too far inland, an extension to the south following the summits of the mountains nearest the coast, was suggested, the southern limit being the promontory of the main land that is touched by the 56th parallel of latitude. This point is also the commencement of the *Channel* described by Count Nesselrode as having its southern opening into the ocean in close proximity to Prince of Wales Island To this *embouchure*, must apply the legend *DIXON ENTRANCE*, upon the map issued by the Tribunal, and which appears to be placed so judiciously remote from either, that any one who imagines Observatory Inlet

contains anything that merits the distinction may apply it there.

This summit line would divide the island, and perhaps, under the operation of a ten league limit, leave it uncertain if the southern points of the island were ceded to Russia. It was very immaterial to Britain, under the proposed conditions of possession, if Russia occupied the whole island or not. The method adopted was the simplest, but the change made it necessary to define a fresh starting point for the artificial part of the line. It had been on the coast of the *terre ferme*, it only required the erasure from the map of the part of the line dividing the island, and the substitution in the text of the treaty of *continent*, instead of *terre ferme*. It makes no practical difference if this point is upon the coast of Prince of Wales Island, or if the parallel of latitude is intersected further to the west, because the boundary is here governed entirely by the mountain summits and the ten league limit.

Had the writer from the first, known the view held by Sir Wilfrid Laurier of the immemorial nature of Russian rights in Alaska, it would have simplified the study of the case presented by Canada to the Tribunal. This view proves too much ; in the first place, that the title was just as good before the Russian Empire was in existence as it has been at any time since. And next, that Sir Wilfrid Laurier must have agreed to the Washington Convention of Jan. 1903, with the deliberate purpose of surrendering to the United States the territory to which he supposed they were justly entitled ; but in such a manner as would relieve himself and party of the political responsibility of having done so. The United States Government must have entered into this Convention with a conviction that they were asked to take part in a farce, the motive of which was to "save the face" of Canadians, and allow them to back out of an untenable position with a minimum loss of self esteem. That under such conditions the Commissioners should have been asked to subscribe an oath to judicially consider the questions presented to them, appears to show no more respect to the sanctity that should attend an oath

than an up-to-date-dentist may feel for the antiquated instrument that was called a "key". Having this conviction of the nature of the Russian rights, one that appears to be shared by the legal profession generally, the most serious defect of the treaty of 1825 must appear to be the absence of sufficient recognition by Great Britain of Russia's sovereignty upon this continent. As Russia was a willing signatory of this document, such an omission might be construed as an acceptance by her of the lower status of a commercial tenant ; this of course would constitute a serious flaw in the United States pretensions, and the Canadian case gives evidence of a generous desire to remedy this defect.

It is not to be supposed that the Attorney General made an independent study of the documents in this case, but that his line of argument was in the main suggested by his Canadian colleagues. It has been pointed out (p. 14), how the passage of Canning's letter used as the motto of this treatise, has been misquoted ; this cannot be the result of accident as it agrees with the line of argument adopted. Canada abandons the principle Canning contended for, and uses the pretence of a dispute about limits to distract attention from the undisputed surrender of the territory in which these limits are included. It is not at all probable the Attorney General was conscious of, far less that he was consenting to such a result of his argument ; and perhaps to a certain extent, the same may be said of every lawyer engaged in the case. It is the obvious duty of an advocate to place the case of his client in the best light the nature of the facts will allow, and equally so to refrain from calling unnecessary attention to unfavorable conditions. The interests of Canada demanded that her claim to the heads of the inlets should be given the first consideration ; yet, while U. S. counsel appear to have filled in their time with assertive claims, unsupported by any substantial argument, it is British and Canadians who adduce facts, (?) arguments, and innuendoes, that make their own claim ridiculous. The impression made by their arguments can scarcely fail to be that Canadians should feel ashamed of having so long

without any adequate excuse, attempted to keep honest men out of rights for which they had paid their money.

If there is any meaning in speech the object of the remark quoted on p. 58, is to support a conviction that before the treaty of 1825 Russia had undisputed possession of the islands, and only by the unwarranted pretensions of Great Britain, which the treaty finally set at rest, was her ownership of the mainland disputed. The proposal of Sir Charles Bagot to make Chatham Strait the dividing line, explicitly disproves this assertion, in relation at least to anything to the south or east of this line ; it nevertheless appears as the fundamental condition assumed by the Attorney General's argument. In speaking of the claim formulated by Baron Tuyll, Sir Chas. Bagot points out, "this proposal would deprive his Britannic Majesty of the sovereignty over those inlets and small bays which are to be found between 56° and 54° 45′ of latitude." Under Canadian manipulation, this is understood as disclaiming any British rights to the bays and inlets north of this latitude, while the explicit claim to those between the parallels is unheeded. Lord Alverstone may not have remembered this particular item of evidence, but the impression made on his mind must have been that Britain had no rights in any waters further north. The logical deduction from the whole of the evidence available, appears to be that Sir C. Bagot neither claimed nor disclaimed anything to the north of 56°, simply because the Russian proposal to make the point of the *terre ferme* touched by the 56th parallel the southeasterly limit of the strip on the *coast of the continent*, admitted everything to the east of this narrow border to be strictly British.

With respect to the counter draft of Aug. 1824, the Attorney General speaks of Prince of Wales Island "which entirely belonged to Russia," "belonging entirely to Russia". This comment is not only uncalled for in the interests of Canada, but it is not warranted by the dictum of the treaty which says it "*shall* belong wholly to Russia," an expression implying that whatever property Russia would have in the island, would be a result of the treaty

and of no other cause whatever ; and this remark applies perhaps to the whole of Russian America, but with greater force to "the whole of that part of the coast which constitutes the subject of discussion and which extends from 59° north latitude to 54° 40′."

It is to be observed, that beyond the general mention of islands in the first sentence of Art. III., and the particular mention of Prince of Wales Island necessitated by its cession as an *island* to Russia, the other *islands* are not mentioned. This is not because their existence is ignored, but simply that as far as the objects of the treaty are in question there is nothing in the fact of their being islands, to distinguish them from the continent to which they belong. As the Americans have been insistent in pointing out, the negotiators knew so little of the local details that masses of land, that have since been discovered to consist of numerous islands, must then have been considered as peninsular, and what have since become known as straits, must then have been regarded as the estuaries of rivers ; these would be the "rivers" of the treaty, the freedom of which for the purposes of commerce, was intended to be vested *for ever* in the sovereignty of Great Britain. From the above mentioned considerations it appears reasonable to suppose, that at the time the treaty was made neither Russian or Briton had the slightest idea that behind the continental coast that bounded the ocean, lay hidden away a "mainland coastline," and that consequently it was impossible either should have contemplated such a "coast" as the base of the ten league limitation.

"It is to be observed that the reasons that induced Russia to desire this *lisière* were purely commercial, and Count Nesselrode, writing to Count Lieven, pointed out in April, 1824, that if Prince of Wales Island remained Russian it would be useful to Russia ; otherwise the Russian establishment would be at the mercy of Great Britain." This expression of opinion by one Russian to another, has been successfully used by the United States, to obtain the surrender of British territory *now*, that it was quite unable to effect when the letters were written and when

the character of their contents was more correctly appreciated.

There is little room for doubt, these letters were written with a full knowledge and determination to take advantage of the principles of British diplomacy and the clerical methods of the Foreign Office ; in the archives of which it must be known such letters are put on record without being stigmatized by any comment on the nature of their contents, as : "This is a lie, the writer knows we have repudiated this assumption again and again." "This statement is not borne out by the facts ; under certain conditions it might be so, and it is our business to be certain such conditions shall not become established." There appear to be several of these letters in the "Appx. Br. Case," not directly addressed to the British Minister and demanding an answer that would be placed on record with them. The wonder is they should have been placed on record at all, or be accepted by any person of observant and logical habits as having the slightest value as evidence, except perhaps, of the writer's own wishes. The effect of such unbalanced assertions upon the legal mind is shown in Mr. Aylesworth's comment : "From the time of Count Nesselrode's refusal to treat as to reciprocal trading rights elsewhere than in the *lisière* and Mr. Canning's acquiescence in such refusal, no further negotiations whatever on that subject took place." Of course not. Canning's reply was, in effect, that if Russia would not sign the treaty in the form proposed Britain was prepared to assert her rights by force. What evidence is there to show that the "establishment" Count Nesselrode was so anxious should not be at the mercy of Great Britain, existed anywhere but in his hopes of the future ? The more insistent the Russian pretensions the more determined British Ministers would be to limit their extension either in area or duration. The protection to Russian commercial interests was assured, not by ceding large areas to her rule, but by the undertaking that British subjects should not settle within the limits assigned to Russian trade. This, as well as the other conditions "on which it was impossible Russia should give way,"—till the right kind of pressure was applied—were such

as are utterly inconsistent with the idea that Britain recognised any claims of Russia to sovereignty upon this continent. The theory of Canada, as well as of the United States in this matter, appears to be, that far from careless indifference to their retention Britain never had any rights on this part of the continent to surrender; and that every provision in the treaty to her advantage has been placed there by the generosity of Russia. Even the free navigation of rivers crossing the Russian territory, and which appear to have been reserved to Britain *for ever*, (the only provision of the treaty to which these significant words are applied,) meant only a freedom during Russia's pleasure. This being the case, how can we fitly gage the insolence, the impotent impudence of the demands against which Count Nesselrode so firmly set his face; and all made under the hypocritical pretense of an appeal to the sense of justice, and a desire to avoid inflicting unnecessary humiliation! A nation that professes such principles in dealing with its weaker neighbours, shows itself a fit and promising object for spoliation by diplomatic lying.

There appears a difference in attitude regarding the ownership of the islands, the United States takes them as a matter of course, and says nothing about it; while British and Canadians appear to be under an emotional necessity to make a confession of faith, that these islands were so really and truly Russian before the treaty, that they were completely forgotten—or ignored—"exactly as though they had never existed." *(As islands?)* As no particular part of the preliminary correspondence has been cited in support of this contention, it is only reasonable to suppose there are none sufficiently explicit, but the conviction is derived from vague general impressions only.

DUE MAR 29 '34
DUE APR 10 '39
MAY 9 '61 H
CANCELLED
WIDENER
BOOK DUE
JAN 1 4 1966

US 6879.50
Canada's Alaskan dismemberment : an
Widener Library 004311558
3 2044 086 293 321